

STATE LEGISLATIVE REACTIONS TO NO CHILD LEFT BEHIND:

EDUCATION LEADERS IN THREE STATES

BY

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Abstract

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This dissertation examines the historical background of federal regulations that have expanded over the past thirty years, and their impact on state legislative resistance to No Child Left Behind (NCLB). The federal government's involvement in public education offers an instructive opportunity for inquiry into cooperative federalism. State resistance to NCLB provides an example for study when considering state reactions to federal regulations and ensuing intergovernmental conflicts in regard to public education. This study focuses on legislative responses to NCLB, with reactions from legislators from Kansas, Missouri, and Colorado. The investigation is drawn from interviews conducted with state legislators from these three states. Some common threads emerged from the interviews and from a review of the related literature. One includes the question of the constitutionality of NCLB and a power struggle that exists in public education between various levels of government. In light of state challenges to NCLB legislation, a number of consistent factors of resistance were evidenced by the states. These state legislative reactions offer significant insight for challenges facing future public education federal legislation, and may be useful as a model of study for examining state reactions in the years ahead.

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Chapter One

Introduction

“When existing federal educational programs, well-intentioned though they may be, are not as effective as they could or should be, the problem is not just wasted tax dollars, but wasted chances to help those most in need” (Vinovskis, 1999, p.201).

Legislators, educators, parents, and students have voiced their concern that the No Child Left Behind Act (NCLB) has clearly been in need of serious repair. One issue among educators, scholars, and policy reformers is the extent to which NCLB has transferred the power of making policy decisions in public education from the states into the hands of the federal government. With the initial passage of No Child Left Behind, the federal government’s power escalated, demanding a stronger role in defining quality education for public schools, leading to strained relations between the states and the federal government. State reactions to No Child Left Behind is the focus of this inquiry and can offer some insight into whether or not NCLB will be successful as a policy initiative in the long run.

The No Child Left Behind Act (NCLB) of 2001 was signed into law on January 8, 2002, by President Bush. This legislation represented the most sweeping changes to the Elementary and Education Act (ESEA) since it was enacted in 1965 (U.S. Department of Education, 2002). President Bush stated, “These reforms express my deep belief in our public schools and their mission to build the mind and character of every child, from every background, in every part of America” (2002). He emphasized his concern for many of the neediest children who were being left behind despite the nearly \$200 billion in federal spending since the passage of ESEA. Bush called for bipartisan solutions from

the legislature based on accountability, choice, and flexibility in Federal education programs. Consequently, The No Child Left Behind Act is based on four basic public education reform principles: “stronger accountability for results, increased flexibility and local control, expanded options for parents, and an emphasis on teaching methods that have been proven to work” (U.S. Department of Education, 2002).

NCLB, which reauthorized ESEA, incorporated the principles and strategies proposed by President Bush which included increased accountability for each state, for each school district, and for each school; a greater school choice for parents and students, particularly those attending low-performing schools; flexibility for states and local educational agencies (LEAs) in the use of federal education dollars; and strong emphasis on reading, especially elementary education (U.S. Department of Education, 2002).

The first basic reform principle mentioned above entailed “stronger accountability for results.” Under NCLB, states were required to strive to close the student achievement gap, including those students who were disadvantaged, to ensure that all students achieved academic proficiency. Annual state and school district report cards were required to inform parents and communities about state and school progress of the students and schools in their state. States were responsible to strengthen their academic standards for what every child should know and learn in reading, mathematics, and science for elementary, middle and high schools. Beginning in the 2002-03 school year, schools administered tests in each of three grade spans: grades 3-5, grades 6-9, and grades 10-12 in all schools. Beginning in the 2005-06 school year, tests were administered every year in grades 3 through 8. Then, in the 2007-08 school year, science achievement was also tested. Schools that did not make progress were to provide

“supplemental services, such as free tutoring or after-school assistance; take corrective actions; and, if still not making adequate yearly progress after five years, make dramatic changes to the way the school is run” (U.S. Department of Education, 2004).

NCLB was supposed to strengthen Title I of ESEA, by requiring states to implement accountability systems for all public schools and their students. The accountability systems were to be based on challenging state standards in reading and mathematics, annual testing for all students in grades 3-8, and annual statewide progress objectives to ensure that all student subgroups reached academic proficiency by 2014. State progress objectives were to be reported and broken down into subgroups based on poverty, race, ethnicity, disability, and limited English proficiency, to ensure that no subgroup of students would be left behind. If school districts and schools failed to make adequate yearly progress (AYP) toward statewide proficiency goals, corrective action and possible restructuring measures could be taken. (U.S. Department of Education, 2002)

Under NCLB, each state was to develop and implement measurements for determining whether its schools and local educational agencies (LEAs) were making adequate yearly progress (AYP). Adequate yearly progress is a state's measure of progress toward the goal of 100 percent of their students achieving state academic standards in reading/language arts, and mathematics. AYP sets the minimum level of proficiency that the state, its school districts, and its schools must achieve each year on annual assessments. Parents whose children are attending Title I (low-income) schools that do not make AYP over a period of years are given options to transfer their child to another school or obtain free tutoring and supplemental educational services (U.S. Department of Education, 2010).

The second basic principle of NCLB was supposed to offer increased flexibility and local control for states and communities. Under NCLB, states and school districts were to have some flexibility concerning how they use federal education funds, including having additional flexibility with funds for hiring new teachers, increasing teacher pay, and improving teacher training and professional development (U.S. Department of Education, 2004). However, to ensure that no child lost the opportunity for a quality education as a result of attending a failing school, the choice and supplemental service requirements provided an incentive for low-performing schools to improve academically. Schools that wanted to avoid losing students would have to improve, or if they failed to make AYP for five years, those schools could run the risk of reconstitution under a restructuring plan (U.S. Department of Education, 2002).

The third reform principle encouraged more choices for parents. The NCLB Act significantly increased the choices available to the parents of students attending Title I schools that failed to meet state standards (U.S. Department of Education, 2002). Parents whose children attended low-performing schools had new options under NCLB. Parents were given the option to transfer their children to a better-performing public school (including a public charter school) within their district, if a school did not meet state standards for at least two consecutive years. The district was required to fund the transportation costs for any student transfers, using Title I funds if necessary. Schools that failed to meet state standards for at least three years were eligible to receive supplemental educational services, including tutoring, after-school services, and summer school for students from low-income families (U.S. Department of Education, 2004). Additionally, NCLB required school districts to spend up to 20 percent of their Title I

funds to help ensure that LEAs offered meaningful school choices and supplemental educational services to any eligible students (U.S. Department of Education, 2002).

The fourth basic principle required of NCLB was for schools to implement proven education methods. NCLB placed an emphasis on determining best practices and on providing educational programs that were proven effective through scientific research. Federal funding was targeted to support programs and instructional methods that endeavored to improve student learning and student achievement (U.S. Department of Education, 2004). One example of an effective proven instructional method included The Early Reading First program. It was implemented to make competitive 6-year awards to LEAs to support early language, literacy, and pre-reading development of preschool-age children, particularly those from low-income families. Recipients used instructional tools to help students attain the necessary skills needed for reading development in kindergarten and beyond (U.S. Department of Education, 2002). States and school districts were to concentrate resources on proven educational methods. NCLB was supposed to target education dollars for research-based programs that had been proven to help most children learn. For example:

- In 2002, \$900 million was distributed to states for the President's Reading First plan.
- Federal dollars were tied to programs that used scientifically proven ways of teaching children to read.
- Communities were benefited from a federally funded program called Early Reading First. This program helped develop language and reading skills for pre-school children, especially those from low-income families.

- Schools and teachers received a boost from more than \$4 billion, in 2002, which would allow schools to promote teacher quality through training and recruitment.

An additional requirement for school districts was to hire and retain highly qualified teachers. A major objective of NCLB was to ensure that all students, regardless of race, ethnicity, or income, had the best teachers possible, with the idea that a well-prepared teacher is vitally important to a student's education. One reason for including this requirement of retaining highly qualified teachers was a result of studies which indicated many schools with economically disadvantaged students have disproportionately more teachers who teach out-of-field or are not fully qualified in the subjects they teach. This was one way to address this dilemma (U.S. Department of Education, 2010).

In order for a teacher to be highly qualified under NCLB, a teacher must:

- Have a bachelor's degree
- Have full state certification and licensure as defined by the State Department of Education
- Be able to demonstrate competency, as defined by the state, in each core academic subject he or she teaches. (U.S. Department of Education, 2009)

Full state certification was determined by each state, according to its state policy. Even though NCLB allowed states to set their own certification requirements, it encouraged states to have high standards to strengthen their certification requirements. Maintaining highly qualified teachers was required in "core academic subjects" which included English, reading or language arts, math, science, foreign languages, civics and

government, economics, arts, history and geography (U.S. Department of Education, 2010).Special education teachers and teachers of English language learners must be highly qualified if they teach core academic subjects to their students. (U.S. Department of Education, 2009)

In addition to the basic requirements of a state to ensure their teachers are highly qualified, the following requirements also are applicable for each public school and their respective teachers:

- Elementary school teachers who are new to the profession must demonstrate competency by passing a rigorous state test on subject knowledge and teaching skills in reading or language arts, writing, mathematics, and other areas of the basic elementary school curriculum.
- At the middle and high school levels, new teachers must demonstrate competency either by passing a rigorous state test in each subject they teach, or by holding an academic major or course work equivalent to an academic major, an advanced degree, or advanced certification or credentials.
- Experienced teachers must have a bachelor's degree and meet certification requirements (no emergency certificates). There are multiple ways for experienced teachers to demonstrate subject area competency.
- Teachers may opt for taking a subject matter test (as determined by the state) or demonstrate competency through the state system of "high, objective, uniform state standard of evaluation (HOUSSE)." Middle and high school teachers may demonstrate competency if they have a major (or its equivalent) or advanced credentials in the subject they teach.

- All teachers of core academic subjects were to have met highly qualified standards by the end of the 2005-06 school year. No State met the goal of having all teachers highly qualified by that deadline. States are currently working on plans for reaching the highly qualified teacher goal during the 2006-07 school year. (U.S. Department of Education, 2009).

Whether or not The No Child Left Behind Act (NCLB) has fulfilled its own goals and expectations, and whether or not it has been a successful venture embarked upon by the federal government in meeting those intended outcomes, NCLB has been questioned, challenged, and scrutinized by the states. Kansas, Missouri, and Colorado, were the focus of consideration in this study, and each state was examined with respect to the reactions and the challenges made by key state legislators from each of these states. The resistance by the state legislators to this historic federal legislation will be discussed in the chapters to follow.

This study will include a discussion of the reactions of select legislators in each of these three states in meeting the demands of NCLB. Even though these states border each other, there are differences that can be examined, including the demographic makeup of each state, achievement records under NCLB, maintaining highly qualified teachers, which have impacted each state's education policies, and each state's resistance to this federal education legislation. The progress of each state under NCLB was examined in regard to possible motivation for the states to rebel against NCLB, with a state to state comparison to determine any similarities or differences for potential reaction to NCLB.

The U.S. Department of Education tracked the progress made in Kansas, Missouri, and Colorado, during the 2008 academic school year and mapped the states'

2008 educational progress, which a portion is documented in the following chapter. The U.S. Department of Education maintained that success for each state depended on the commitment of each state to maintain high standards, maintain annual assessments, ensure accountability for results, and strive for having highly qualified teachers in every classroom, to reach proficiency standards by 2014. Whether or not these states met those arrangements are examined in this study, and the reactions by the states in that context will be discussed.

Preparation for this inquiry required gathering needed information from each of the three states, Kansas, Missouri, and Colorado. State legislators were contacted to request their participation in an interview process for this study. The legislators consisted of current members of the Senate or members of the House of Representatives from their respective state legislatures. Two legislators from each of the three states accepted the invitation to be interviewed, including participants from the two major political parties. Each of the legislators was purposely selected to participate in this investigation because of their knowledge and involvement in public education matters within their states, where they played a key role. A qualitative and historical approach was used in this interview method, allowing legislators to reflect and offer insight regarding issues and problems related to No Child Left Behind from their standpoint.

Chapter Two

“We can't solve problems by using the same kind of thinking we used when we created them.” *Albert Einstein*

Historical Background

Scholars of federalism typically have found that state legislative resistance to federal regulations has been rare, yet, some states have responded any way but typically to No Child Left Behind (NCLB) federal legislation (Shelly, 2008). With federal regulation expanding over the past thirty years there has been an increase in state legislative resistance to the federal government through various lobbying efforts. These strategies, however, have not necessarily altered the general direction of federal behavior towards the states (Cho & Wright 2001; Posner 1997). Bryan Shelly suggested that, “States could consider more confrontational and drastic methods to protect their autonomy, but sustained formal state legislative and legal challenges to federal regulation have been extremely rare” (Shelly, 2008, p. 444).

The significant exception to this has been state resistance to No Child Left Behind legislation. The expansive regulations placed on the states to comply with NCLB, coupled with the federal government threatening to pull federal funding from the states, has resulted in additional financial pressure on the states to adhere to the demands of NCLB. In this way, NCLB has provided a classic example for study when considering state reactions to federal regulations and ensuing intergovernmental conflicts especially in regard to public education.

The No Child Left Behind Act of 2001 has touched the field of education with reaction and resistance from state and local governments. Other than perhaps the desegregation and civil rights issues of the 1950's and 1960's, NCLB has arguably

influenced state education policies more than any other federal education legislation in American history. The basic issue among educators, scholars, and policy reformers is the extent to which NCLB has endeavored to transfer the power of making policy decisions in public education from the states into the hands of the federal government. Some of the responses from the states stem from the ongoing battle over states' rights versus national interests within the federal system of government established in the United States Constitution.

At the Constitution Convention of 1787, the Framers established a fundamental principle in creating a federal system, dividing governmental power between the central or national government, and state and local governments. This division of powers is reinforced in the Tenth Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Consequently, the states reserve the power to provide and to fund public education established within their state constitutions. However, at the same time, the national government also operates within its sphere of influence. In the Preamble of the Constitution, one of the purposes of the national government is to "promote the general welfare," and stated in Article 1, Section 8, one of the powers given to the Congress is to "provide for the...general welfare." Even though the Constitution does not directly enumerate any power to the national government to provide public education, a broad interpretation of promoting and providing for the general welfare has been used to increase the power of the national government in public education. The complex arrangement of cooperative federalism, in which national and state governments interact cooperatively to solve societal issues, evolved over time. This change in philosophy,

from the early years of dual federalism where the national and state governments made policy decisions separately, has contributed to a power struggle between the national government and state governments concerning federal funding and education policies.

The Elementary and Secondary Education Act

During the last four decades public education has seen an increase in the involvement of the national government and intertwining federal education policies. The passage of the Elementary and Secondary Education Act (ESEA) in 1965 initiated an increase in federal aid to public education, offering monies to schools with high concentrations of low-income students. The ESEA “brought about the largest infusion of federal money for education up until that time. In just one year federal spending on education doubled from \$1 billion to \$2 billion and grew to nearly \$3 billion by the end of the decade” (Viteritti, 2004, p.69). Title I of ESEA intended to target assistance to students who lived in poverty, which was correlated with low academic achievement (Viteritti, 2004).

Cohen and Moffitt (2009) proposed that Title I of ESEA was an “expression of the old American ideal set down from Horace Mann’s twelfth report that public schools could be the ‘balance wheel in the social machinery’ righting wrongs that the economy and society imposed on children” (p. 2). However, by the 1980’s, with billions of dollars spent on compensatory education for the poor, studies did not indicate a correlation with any tangible results from the classroom (Carter, 1984). Cohen and Moffitt suggested that even though Title I brought modest changes initially by the federal government, “by the first decade of the twenty-first century it has become a center of decision-making for

schools” and it has “wound up as the vehicle for extraordinary assertions of federal ideas and influence” (Cohen & Moffitt, 2009, p. 8).

A Nation at Risk

Even though initially President Ronald Reagan was prepared to eliminate the Department of Education, one of the most influential reports to redirect education policy was released during his first administration, in 1983, by the National Committee on Educational Excellence (NCEE). The report, *A Nation at Risk* (NAR), proclaimed that, “U.S. K-12 educational achievement was on a downward trajectory and that American technological and economic preeminence was consequently imperiled” (Guthrie and Springer, 2004, p.8). The NCEE stated that, “Our nation is at risk. Our once unchallenged preeminence in commerce, industry, science, and technological innovation is being overtaken by competitors throughout the world” (NCEE, 1983, p. 1). These statements created immediate concern that helped to initiate continuing major education reform. Yet, the words “school” and “education” cannot be found in the preceding report’s first sentence. Rather, Harris, Handel, and Mishel expressed that, “the scope is clearly fixed on the economy—‘commerce,’ ‘industry,’ ‘technological innovation’, and, later, ‘exports,’ ‘training’ and ‘employment’” (Harris, Handel & Mishel, 2004, p.37). There are far more economic terms than educational terms in the report. The authors suggested a more fitting title for NAR: *An Economy at Risk*. Even though NAR blames economic stagnation on schools, it is difficult to comprehend how the authors reached that conclusion (2004, p. 37).

NAR’s thesis “rendered the U.S. education dysfunctional, thereby threatening the nation’s technological, military, and economic preeminence” (Guthrie & Springer, 2004,

p.8). The assumption was made that only by elevating education achievement could the United States avoid “subordinating itself to its educational superiors and economic competitors” (Guthrie & Springer, 2004, p.8). Guthrie and Springer stated, “In retrospect it is apparent that the report was wrong on both counts. The U.S. education achievement was no lower in 1983 than it had been in previous points in history. The U.S. economy was not at any long-term risk, at least not due to an ineffective education system” (2004, p.8). Whether or not the report was accurate, NAR has contributed to a vastly enhanced federal government role in public education and has initiated a response that resulted in significant changes in American K-12 schools. They argued that some of these changes made in public education, by the federal government, have had both positive and negative effects. Educators and legislators have argued whether the positive outcomes outweigh the negative ones (Guthrie and Springer, 2004).

This single report (NAR) released by the National Commission on Excellence in Education (NCEE) in 1983, helped to charter new territory within the federal government’s expanding role in public education by redirecting public policy. The NCEE challenged the federal government to take the lead in steering education policy to correct the issues identified in NAR, and stated the “Federal Government has the primary responsibility to identify the national interest in education. It should also help fund and support efforts to protect and promote that interest. It must provide the national leadership to ensure that the Nation’s public and private resources are marshaled to address the issues...” (NCEE, 1983, p.33). Kenneth Wong suggested “NAR principles on school quality and standards play an important role in reshaping the way the federal

government designs its largest program in elementary and secondary education, Title I of the Elementary and Secondary Education Act” (Wong & Nicotera, 2004, p.88).

No Child Left Behind

The new ESEA, commonly referred to as the No Child Left Behind Act (NCLB), was signed into law January 8, 2002, and offered the most sweeping changes in ESEA since it was enacted in 1965. The No Child Left Behind Act was one of the most significant and controversial changes in federal education policy” (Sunderman & Kim, 2004). It requires America’s schools to describe success in terms of what each student accomplishes. The NCLB Act contains four basic reform principles: stronger accountability results, increased flexibility and local control, expanded options for parents, and an emphasis on teaching methods that have been proven to work (NCEE, 1983). Additionally, Title I reform articulated in NCLB will necessitate trade-offs among competing stakeholders in public education. The NCLB Act forces educational leaders at all levels of government to “mediate tensions, including those between system-wide standards and innovation, the necessity for testing and the need for instructional quality, and the school wide approach and focused treatment of particular academic needs” (Wong & Nicotera, 2004, p.102).

The NCLB federal legislation is under scrutiny regarding the effectiveness of the law. Even President Bush conceded that he had not read NCLB in its entirety before signing it, and it is highly unlikely that anyone could have read or fully understood all of its provisions before Congress ratified a bargain between the White House and Republican and Democratic leaders in Congress that produced a bill more than a thousand pages long (Sunderman & Kim, 2004). The system of cooperative federalism in

education was designed to encourage and support all fifty states. However, NCLB seems to undermine the development and implementation of the states' own systems.

Legislators and educators were not convinced NCLB would coincide with what the state already had in place, and consequently political resistance began at the district and state level. Currently, a majority of all fifty states have resisted and challenged NCLB in some manner (Bacon, 2004). Even though most states are going to continue to accept federal funding and most of the provisions to NCLB, over twenty state legislatures have responded in resistance to NCLB introducing resolutions and bills protesting what some legislators see as an intrusion of the control states should maintain in public education (Bacon, 2004).

NCLB State Legislative Responses

The following chart indicates those states that have resisted NCLB in one form or another through state bills, resolutions, and pieces of legislation (Shelly, 2008).

Legislative resistance to NCLB included bills and resolutions initiated by state governments urging Congress to amend certain parts of the law. Bryan Shelly's study in 2008 indicated the number of states that resisted some portion of NCLB had risen to thirty states. However, state legislatures have not resisted NCLB to the end that their state legislature was willing to forego the federal education funding attached to NCLB. In other words, state legislators did not pass legislation stating that they were "opting out" of NCLB, suggesting that the federal government could retain the federal funding allocated for their state.

State Legislative Resistance to NCLB

Have not introduced a bill or resolution against NCLB	Alabama, Arkansas, Delaware, Georgia, Massachusetts, Michigan, Mississippi, Missouri, Montana, New York, North Carolina, Texas
Have introduced a resolution or bill asking Congress to modify NCLB	Alaska, Arizona, Florida, Iowa, Kansas, Maryland, Nebraska, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Vermont, Washington, Wisconsin, Wyoming
Have passed a resolution through at least one house of legislature	California, Idaho, Indiana, Kentucky, Minnesota, Oklahoma, Rhode Island, West Virginia
Have passed a resolution through legislature and executive	Hawaii, Louisiana, New Mexico
Have passed a law placing state in formal opposition to NCLB through one house of legislature	Nevada, New Jersey
Have passed a law placing state in formal opposition through both houses of legislature	None
Have passed a law placing state in formal opposition	Colorado, Connecticut, Illinois, Maine, Utah, Virginia

Source of bills and status: (National Conference of State Legislatures 2006) and state legislature web pages. Due to the extent of the challenge Connecticut's lawsuit against NCLB poses, the state is included in the final category.

Shelly pointed out “eight states have pursued a more confrontational strategy and considered laws formally opposing parts of NCLB, which place them in direct defiance of the federal government” (Shelly, 2008, p. 447). For example, Utah's 2005 law gave “the state's standards preference over federal requirements and instructs officials to ignore NCLB where it conflicts with state laws” (2008, p. 447). The State of Maine directed the Attorney General to “bring suit against the Federal Government if federal funding is

insufficient to implement” (Shelly, 2008). These legislative challenges helped to perpetuate legislative resistance. On the other hand, Shelly suggested these challenges were unlikely to lead to the repeal of NCLB, but it certainly forced the hand of the federal government to have an open ear to the demands of the states. For instance, the State of Utah requested that the Department of Education adopt a "new, more conciliatory stance" towards implementation (Debray, Kathryn, and Priscilla 2005; McGuinn 2005). The importance of the resistance to NCLB is that these state challenges are causing change that is relatively unprecedented, whether it is simply symbolic in nature or more of a rebellion by the states (Shelly, 2008).

State Cases Challenging NCLB

The state of Arizona has challenged NCLB because its legislature viewed NCLB as an unfunded mandate. The momentum to opt-out of NCLB was thwarted because of strings attached that made challenging NCLB difficult (Hammel, 2008). A bill sponsored by Rep. David Schapira, stated that Arizona would opt-out of NCLB by 2011, and the state would fund any differences in loss of funds. Schapira’s hope was the federal government would fix the problem to appropriately fund the state as it had promised, so that the state would not opt-out. Shreve (2008) suggested states are looking at these sponsored bills as a ploy to make necessary changes while NCLB seems to be vulnerable. Rep. Marsha Swails also made the point “the message is loud and clear from states across the nation that we are tired of mandates from the federal government” as cited in Hammel (2008). Yet, with the initial rejection of the bill by the Senate’s Education Committee with a 3-3 tie vote, little room was left for revival. The House proposal would have removed Arizona from this federal legislation by mid-2010, but the bill could only take

force if the legislature would make up any financial loss of federal funding. To break away from federal funding also seemed highly unlikely because of the additional financial constraints placed on the states as a result of current economic conditions (*The Associated Press*, 2008).

The state of Virginia also contemplated withdrawing from NCLB federal legislation because it viewed NCLB as an inflexible federal mandate. The Virginia legislature passed legislation directing the State Board of Education to decide whether or not to withdraw from participating in NCLB. Yet, neither Governor Kaine nor the State Board of Education was likely to approve such a measure. The pull-out of NCLB would put too much strain on the education funding for the state. Virginia's 2009 education budget received \$416 million in federal education funding according to the U.S. Department of Education. Apparently the Governor would not countenance Virginia losing that amount of financial assistance from the federal government by opting-out of NCLB. Even though the governor would have supported the wording of the bill to complete a study of the problems with NCLB, losing so large a sum of educational funding was too great (Zehr, 2008). The legislation was a reflection of the ongoing frustration that educators and legislators have had to deal with in its implementation of NCLB. Even though the State Board of Education supported challenging aspects of NCLB, it did not take the position that Virginia would withdraw completely from this federal legislation. When state officials requested additional flexibility on several issues from the U.S. Department of Education, their requests were rebuffed (Zehr, 2008).

The State of Minnesota not only faced challenges with NCLB's 2014 proficiency goals, it also had differences in determining how to go about making changes to NCLB

within the state legislature as cited in Yost (2008). For example, in 2008, Minnesota Republican senators planned to introduce legislation that would allow Minnesota to end its participation with NCLB. Senator Michel asserted that, "We've had five years of the No Child Left Behind regime, and I think it's safe to call it a failure now. We're giving it an F and trying to take back our schools" (Yost, 2008, p.16). Republicans proposed giving education back to local control, and if Minnesota did so, the state could "make up the \$250 million it lost in federal funding by not having to use local money to administer the constraints of the federal law, saving tens of millions of dollars" (Yost, 2008, p.16). Over the past several years, Minnesota senators and representatives from both parties have tried to remove their state from the NCLB legislation, but all efforts to do so have been thwarted. Challenging the federal government has a price, the loss of potentially 250 million dollars per year in federal funds (Yost, 2008). Additionally, there are educators and legislators in Minnesota who had concerns about where this decision could take them. Some educators opposed the Republican proposal because it would force "schools to devote too much time and money to testing and can result in tough penalties, such as the forced reorganization of entire schools if they fail to meet their goals for too many consecutive years" (Yost, 2008, p.16). Even though Democrats initially proposed almost identical legislation, their position has changed. For example, Rep. Greiling's position for NCLB evolved into an "amend-it-don't-end-it" for NCLB. At the local level, school districts' educators also were faced with the dilemma of whether or not to leave NCLB behind. Marshall Superintendent, Klint Willert, suggested that if changes were not made to NCLB then the federal act should be scrapped, but if the act made some reformed change, then Willert believed it would be preferable to work with an altered plan than to

have the state risk losing federal monies. He noted NCLB did impose “arbitrary benchmarks on schools and then changes the expectations every year, instead of letting schools use growth models that measure individual student progress” (Yost, 2008, p.16). Yet at the same time, Willert was concerned opting-out of NCLB would have a detrimental financial impact on his district much like other school districts throughout the state.

Some alternatives to simply opting-out of NCLB included initiating the growth-model approach many states implemented to improve their data systems so the district could track individual student growth over time. In this model individual student performance is measured from the beginning of a school year to the end of the school year. Teachers are supplied the resources and the results to see how well students have progressed. This model measures individual growth rather than NCLB’s annual assessments that compare results of one grade level, one year, to the same grade level the next year, even though the students are a completely different group of students being tested (Yost, 2008). Weighing results between groups of students is even more difficult when comparing school districts to one another, because each state has its own benchmarks. At the state level, there simply is not an efficient way to measure school districts from state to state. Willert also suggested that reaching the goal of proficiency in all districts and with all students by 2014 was unlikely because the bar keeps moving from year to year, and educators are responsible to continue to move forward. Willert stated that, “I liken it to telling a farmer in the region, ‘well, you grew 160-an-acre corn this year. Next year, that means you have to grow 165 an-acre-corn, regardless of soil conditions, weather, you still have to achieve that 165. If you said that to a farmer, they’d

say you were crazy” (Yost, 2008). Perhaps modifications will help to alleviate unrealistic expectations of NCLB and may allow schools to use growth models that can be tied to preparation for post-secondary education (Yost, 2008).

Thomas Hammel suggested that, “If you ask 10 Minnesota legislators what they think of the federal No Child Left Behind Act, you will get 10 different answers. Some like it; some hate it and some are conflicted, but few would say they love every part of the sweeping federal law” (Hammel, 2008). Criticism spanned from the expense passed along to the states without providing the promised matching funds, to the mandates for every school district to reach 100 percent proficiency in reading and math by 2014. Minnesota Representative Garofola suggested even though NCLB may be well-intentioned, it has taken the oversight and federal control of public schools. Garofola stated, “I don’t like Farmington teachers being told what to do by the federal government” (Hammel, 2008). To opt-out of NCLB, two factors had to be considered: the cost to comply with NCLB and the cost to meet the performance requirements of the law. To meet the compliance goals, David Shreve, federal affairs education counsel for the National Conference of State Legislatures, stated that a number of states spend over six percent of their education budget. The money that comes from the federal government, on the other hand, equals about two percent of a state’s education budget, so it costs a state roughly twice the amount of money they receive to comply with NCLB. State Education Commissioner Alice Seagren’s biggest concern was the loss of \$200 million in federal funding. She did not think the federal government would back out of NCLB and she considered the NCLB 2014 goal was utopian, yet Seagren was hopeful that as the 2014 deadline looms that the U.S. Department of Education would become

more flexible (Hammel, 2008). Minnesota did not stand alone in its reaction to NCLB, and Shreve stated additional states have tried to opt out of the law, in some form or another, from its inception. State reactions were initially comprehensive with Utah contemplating the possibility of opting out in 2003. And in 2005, Shreve stated that Utah “passed a bill saying the state would comply with NCLB until the law got in the way of the state’s accountability system” (Hammel, 2008). These are a few examples of state reactions to NCLB that help give some insight into reasons why additional states, including Kansas, considered some form of resistance to NCLB.

Plan of Study

Three states were the focus of consideration in this study, and each one was examined with respect to the reactions and the challenges faced with NCLB legislation. Keeping close to home, the state of Kansas, along with the two bordering states of Missouri and Colorado have been chosen for this investigation. The study will include a discussion of the reactions of each state in meeting the demands of NCLB. Even though these three states border each other and share some similarities, there are differences that can be examined, including the demographic makeup of each state, achievement records under NCLB, the number of highly qualified teachers, and other factors that have impacted their respective education policies and responses to federal legislation. Following each state’s progress under NCLB, a comparison between these three states will be offered.

The US Department of Education has tracked the progress made in Kansas, Missouri, and Colorado Schools during the 2008 academic school year (U.S. Department of Education, 2009). In mapping the states’ 2008 educational progress, the Department of

Education concluded after six years of NCLB, mid-way to the goal of having students on grade level or better in reading and math by 2014, they have collected “more data than ever before about the academic performance of our students and schools” (U.S. Department of Education, 2009). The information enabled each state to map a course of action for future progress. The U.S. Department of Education suggested that the foundation for success depended on the continued commitment to the NCLB’s core principles of maintaining high standards, annual assessments, accountability for results, highly qualified teachers in every classroom, information and options for parents, and having all children on grade level by 2014.

The State of Kansas

According to The Kansas State Department of Education the story of Kansas education, by many standards, is an enviable one. In comparison to the national average with 71% of schools making adequate yearly progress, 86 % of its Kansas’ schools made AYP during the 2005-2006 school year. Some of the accolades Kansas has achieved include: 95% of Kansas teachers held a degree and license in their assigned position; Kansas students scored above the national average on the ACT and SAT; Kansas students ranked 13 or better on the most recent National Assessment of Educational Progress (NAEP) in reading and mathematics; five Kansas schools were named NCLB Blue Ribbon Schools; and thousands of Excellence awards were earned in 2006 (KSDE, 2008).

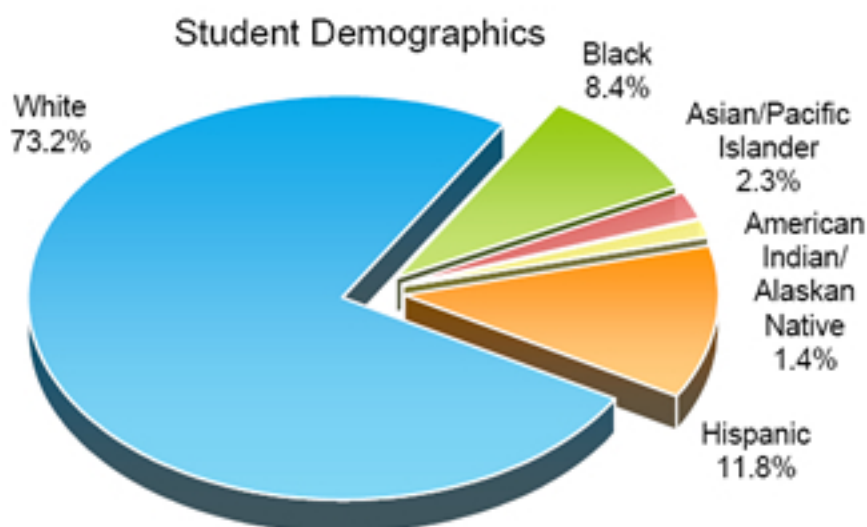
In spite of this, there was a growing concern about maintaining a highly qualified workforce in the State of Kansas, stipulated by the 2006 Legislative Post Audit Bureau, *K-12 Education: Reviewing Issues Related to Developing and Retaining Teachers and*

School Principals, especially in areas with high poverty, in specialized teaching disciplines, and at the high school level. Kansas being ranked 38th nationally (up from 41st from the previous year) in teacher salaries during the 2005-2006 school year, could be seen as a problem in retaining quality teachers and in attracting new teachers to the state (KSDE, 2008) .

Data from the 2006-2007 NCES State Education Profile gives a brief description of elementary and secondary characteristics and finances for the state of Kansas and the national average, and helps to illustrate the length to which Kansas demonstrated student achievement and success under NCLB (See Appendix A-C).

Student Demographics

When determining other factors that contributed to a state's willingness to challenge NCLB, one should consider the demographic characteristics of the state's student population. The following chart indicates that approximately 27% percent of Kansas students were made-up of minority students, including an 11.8% Hispanic population, and an 8.4% black population. This data should raise a question; could the percentage of Kansas minority students present the state with any difficulties in attaining adequate yearly progress obligations, thereby causing the state to resist NCLB legislation? This will be examined further in this study.



Source: National Center for Education Statistics (NCES), Common Core of Data, 2004-05 School Year

The number of low-income students, students with limited English proficiency, and students with disabilities are additional factors to take into consideration when examining the influences on a state's incentive to challenge NCLB. As the following chart shows, Kansas was slightly below the national average with respect to low income students, and considerably below the national average for students with limited English proficiency. In contrast, Kansas was slightly above the national average for students with disabilities.

Kansas Students

	Kansas	United States
Total Students	467,285	49,676,964
Low-Income Students	38.7%	40.9%
Limited English Proficient	5.3%	8.5%
Students with Disabilities	14.0%	13.6%

Source: National Center For Education Statistics, Common Core of Data, 2005-06

Kansas schools also scored well above the national average when comparing schools that made AYP. The following chart indicates that 88% of Kansas schools made AYP, compared to 70% for the rest of the United States. Perhaps another factor in Kansas not directly challenging NCLB was its success in making AYP.

Kansas Schools

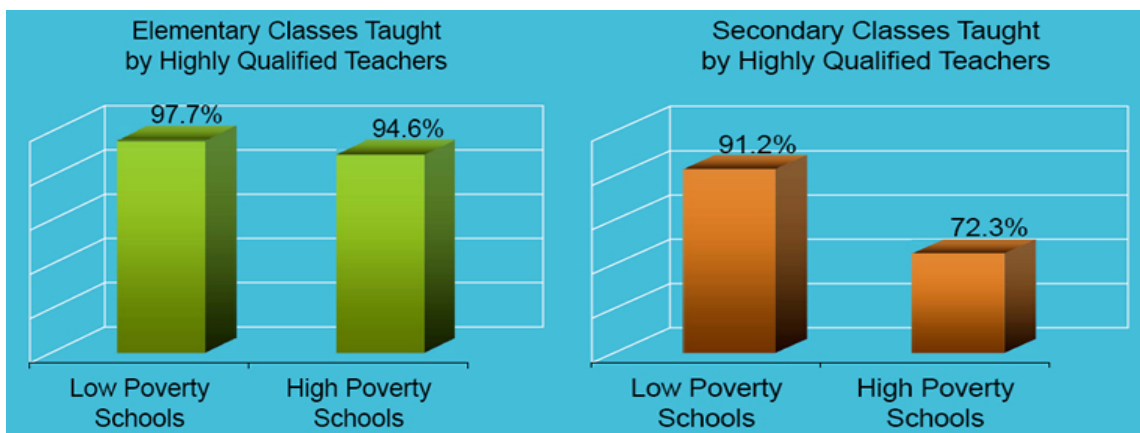
	Kansas	United States
Number of Schools	1,407	98,905
Schools Making Adequate Yearly Progress	1,221 (88.0%)	64,546 (70%)
Schools in Need of Improvement	35	10,676
Schools in Restructuring	3	2,302

Source: Consolidated State Performance Report, 2006-07 & NCES CCD, 2005-06

Kansas Highly Qualified Teachers

Concern about hiring and retaining highly qualified teachers was a factor in some states challenging NCLB. The following chart illustrates the need for Kansas to continue to make gains toward the expectations of having highly qualified teachers teaching in every classroom. Even though close to 98% of elementary teachers were highly qualified in low poverty schools, and close to 95% of elementary education teachers were highly qualified teachers in high poverty schools, the same conditions did not exist at the high school level. Because high school teachers teach a variety of courses, there were more possibilities that they would need to work toward becoming highly qualified in additional areas of study. As the chart indicates, even at the high school level more than 91% of high school teachers were highly qualified in low poverty schools, but only 72.3% of teachers were highly qualified teachers in the high poverty schools in Kansas.

Kansas Highly Qualified Teachers



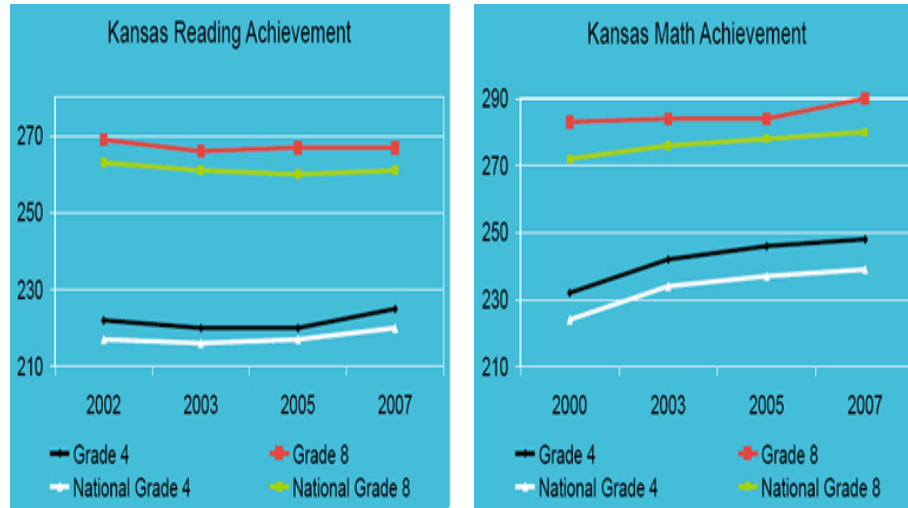
Source: Consolidated State Performance Reports, 2006-07

Kansas's Record of Achievement in Reading and Math

When comparing Kansas's record of achievement in reading at the state level to the record of achievement for 4th and 8th grade students in reading at the national level, Kansas has been successful. Whether it is comparing the entire population of students, White, Black, Hispanic, or low income students, Kansas clearly has a favorable record of proficiency in reading assessments compared to the national average (see Appendix B). The same holds true when comparing the Kansas record of achievement in Math for 4th and 8th grade students to the national data. Kansas students scored well, meeting the proficiency standards for all populations, including Whites, Blacks, Hispanics, and low income populations in comparison to national results (see Appendix C).

The following chart illustrates the record of achievement in reading and math for Kansas to the national record. Even though Kansas has a higher record of achievement from 2002-2007, the state also showed greater improvement than the national average in reading scores at the 4th grade level and greater improvement in reading and a math scores at the 8th grade level, through 2007.

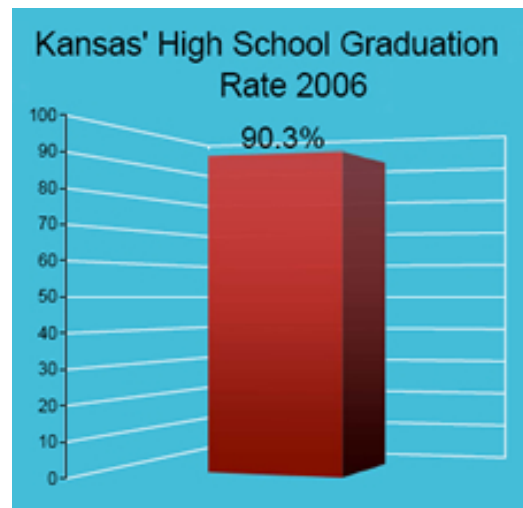
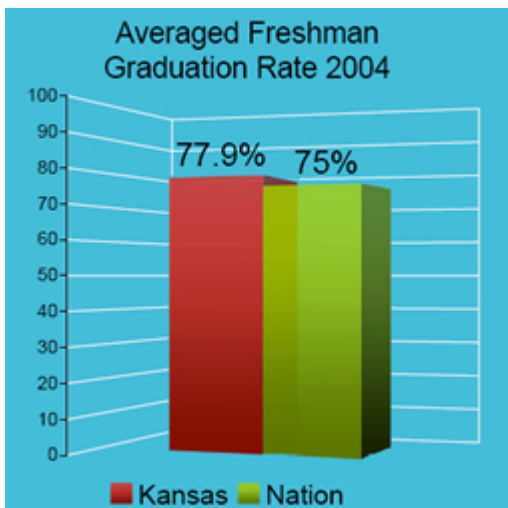
Achievement Trends



Source: National Assessment of Educational Progress (NAEP)

Kansas Graduation Rate

With graduation rates used as an indicator of achievement among local school districts, Kansas schools have shown success in the graduation of high school students. The following chart (on the right) shows that 90.3% of Kansas' high school students graduated as reported by the state. The following chart (on the left) indicates that Kansas had a higher averaged freshman graduation rate (AFGR) than the national average when comparing the percentage of students who graduated on time (NAEP).



Summary of Kansas

The state of Kansas compared well with schools across the nation by many standards. Kansas' students scored higher than the national average on several key assessments. Kansas schools showed success making adequately yearly progress -- fifteen percent higher than the national average, and the state scored higher than the national average on its ACT and SAT scores and ranked high on the national Assessment of Educational Progress on its reading and math assessments. Kansas also had a high graduation rate compared to the national average.

Even though Kansas has seen success attaining highly qualified teachers, there was a growing concern about maintaining a highly qualified workforce in high poverty areas, in specialized teaching areas, and at the high school level. With Kansas teachers' salaries so low in comparison to other states and with the economic conditions schools in Kansas are faced with, it may be difficult to attract and retain highly qualified teachers.

The State of Missouri

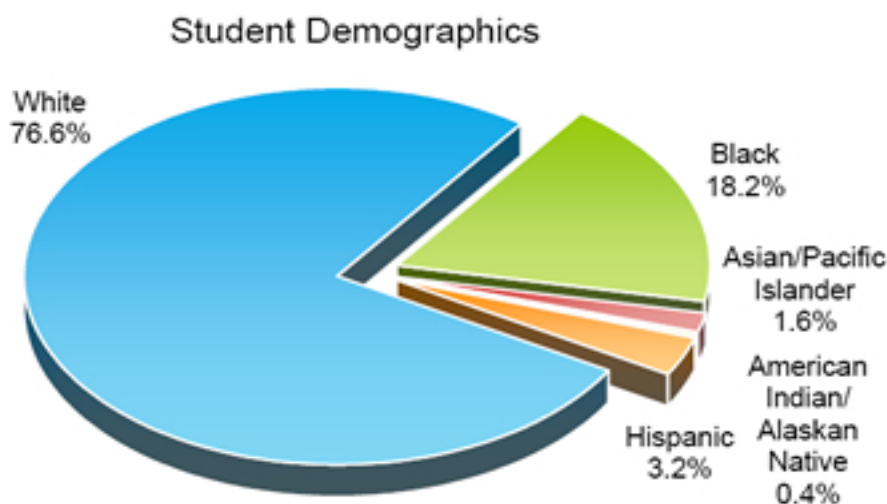
In a news release by the Missouri Department of Elementary and Secondary Education, Gov. Matt Blunt stated that, "Education is the most important, critical and significant investment we can make in our future...I pledged to the people of Missouri that my administration would renew our state's commitment to education, and I have kept that pledge. Education funding has been, and will continue to be, my highest budget priority. I commend Missouri educators and students for their hard work and progress. By maintaining a strong focus on achievement and accountability in all schools, we can help all students have a brighter future" (Missouri Department of Elementary and Secondary Education, 2007).

The Missouri Department of Elementary and Secondary Education reported that nearly 300 Missouri schools earned the state's "Distinction in Performance" award for academic progress and achievement during the 2006-07 school year. A total of 294 school districts qualified for the annual recognition determined by the Department of Elementary and Secondary Education. That year's respective recipients included 247 K-12 districts and 47 K-8 districts (up from 235 districts that qualified for the award the previous year). The Distinction in Performance Award was based on the 14 academic performance standards that are now used in the accreditation of all public school districts. A portion of these standards covered K-8 school districts. The standards were based on scores from the state-mandated MAP tests, graduation rate, attendance, ACT scores, and other indicators. To qualify for the award this year, K-8 districts had to meet 6 of 7 performance standards, including all of those based on the results of MAP tests. K-12 districts had to meet 13 out of 14 standards, including all of the MAP-based measures. Under the state's accreditation process, known as the Missouri School Improvement Program (MSIP), each school district is evaluated at least once every five years. The Distinction in Performance Award was based on the same criteria used in the accreditation process, but it provided an annual confirmation and recognition of a district's consistent performance (Missouri Department of Elementary and Secondary Education, 2007).

Student Demographics

The following data shows the progress made in Missouri schools according to the US Department of Education. In determining factors that contributed to Missouri's willingness to challenge NCLB, one should consider the demographic characteristics of

the state's student population. This chart indicates that the state of Missouri was made up of about twenty-three percent of minority populations, 5% less than Kansas. Missouri's Black population (18.2%) was almost ten percent higher than Kansas (8.4%); however, Missouri's Hispanic population (3.2%) was 8.5% percent lower than Kansas Hispanic population (11.8%) (NCES, 2006).



Source: National Center for Education Statistics (NCES), 2004-05 School Year

The number of low-income students, students with limited English proficiency, and students with disabilities are additional factors one needs to take into consideration when examining the influences of Missouri's desire to challenge NCLB. Unfortunately, Missouri records for students with disabilities are not available in the following chart. As the chart indicates, in comparison to the national average, Missouri was slightly below the national average of low income students, and considerably below the national average of students with limited English proficiency.

Missouri Students

	Missouri	United States
Total Students	917,705	49,676,964
Low-Income Students	39.1%	40.9%
Limited English Proficient	2.0%	8.5%
Students with Disabilities	Not Available	13.6%

Source: National Center for Education Statistics (NCES), 2005-06 School Year

Missouri schools scored much lower than the national average when comparing schools that made adequate yearly progress. The following chart indicates that 53.6% of Missouri's schools made AYP compared to Kansas's 88%, and the national average of 70%, demonstrating how Missouri was well below the national average regarding schools that made AYP.

Missouri Schools

	Missouri	United States
Number of Schools	2,361	98,905
Schools Making Adequate Yearly Progress	1,125 (53.6%)	64,546 (70%)
Schools in Need of Improvement	Not Available	10,676
Schools in Restructuring	Not Available	2,302

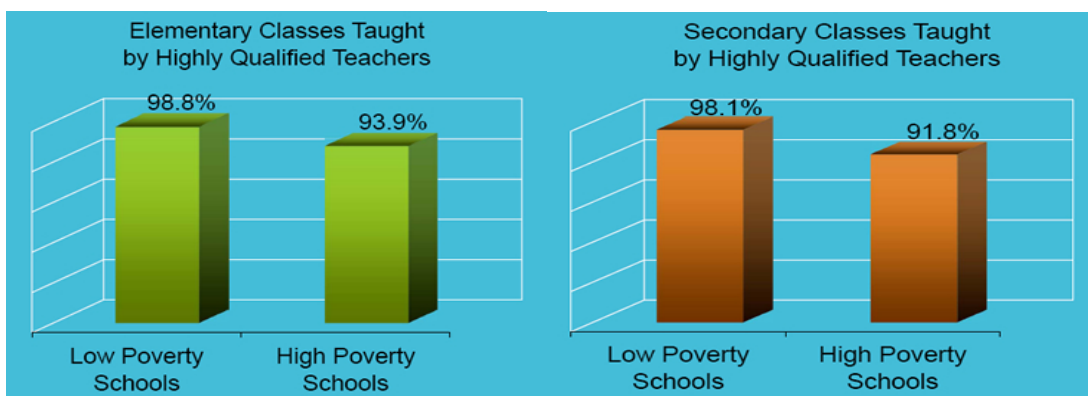
Source: Consolidated State Performance Report, 2006-07 & NCES CCD, 2005-06

Missouri Highly Qualified Teachers

Concern for hiring and retaining highly qualified teachers was a factor for some legislators of Missouri who challenged NCLB. The following chart illustrates a more consistent record for Missouri when comparing Missouri's highly qualified teachers at the elementary and secondary level with low poverty schools and high poverty schools of

Kansas. Close to 99% of elementary education teachers were highly qualified in low poverty schools and close to 94% of elementary education teachers were highly qualified in high poverty schools. The same conditions did not exist at the high school level. Even though high school teachers have a variety of courses they teach and there is more of a possibility that they will need to work toward becoming highly qualified in more than one subject area, Missouri's record did not show the gap seen in Kansas's highly qualified high school teachers. In Missouri, close to 94% of high school teachers were highly qualified in low poverty schools, and close to 92% of teachers were highly qualified teachers in the high poverty schools.

Missouri Highly Qualified Teachers



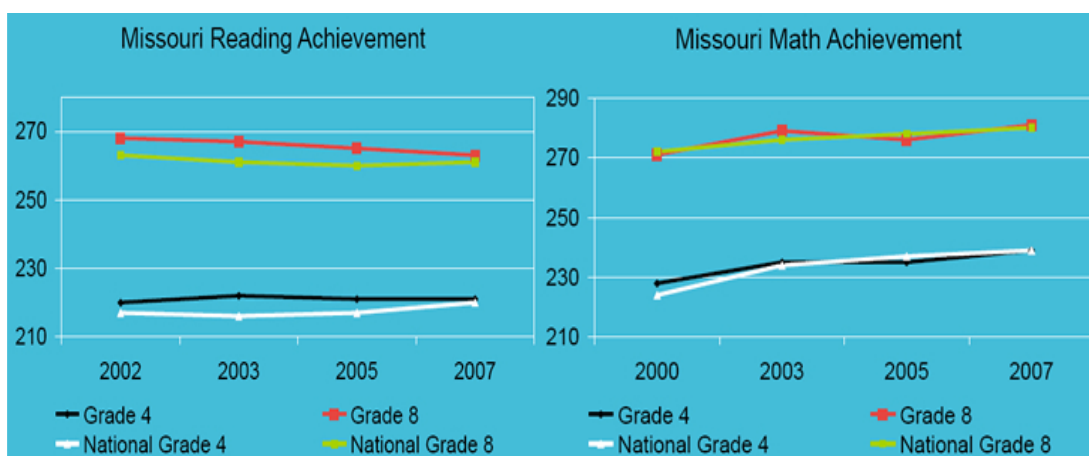
Source: Consolidated State Performance Reports, 2006-07

Missouri's Record of Achievement in Reading and Math

When comparing Missouri's record of achievement in reading to the record of achievement for 4th and 8th grade students in reading at the national level, Missouri had a disappointing record. Whether it is comparing the entire population of students, White, Black, Hispanic, or low income students, Missouri clearly was well below the national record of attaining a level of proficiency in their reading assessments compared to the national average (see Appendix D). The same holds true when comparing the Missouri

record of achievement in Math for 4th and 8th grade students to the national data. Missouri scored well below the proficiency standards for all populations, including Whites, Blacks, Hispanics, and low income populations in comparison to national results (see Appendix E). The following chart illustrates the record of achievement in reading and math for Missouri by comparing it to national results. Even though Missouri had a lower percentage of schools that attained the proficiency level in reading and math, the overall average number of students who scored above the national average in reading and math scores still occurred.

Achievement Trends



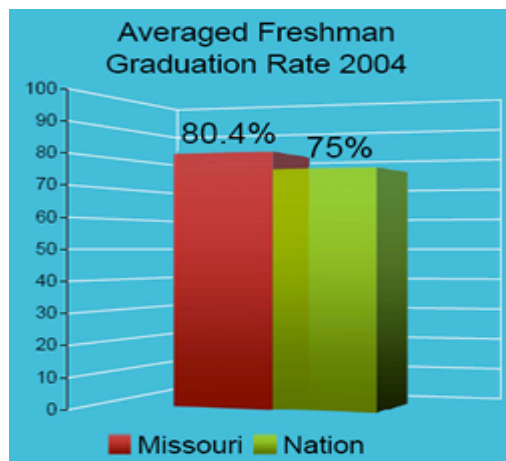
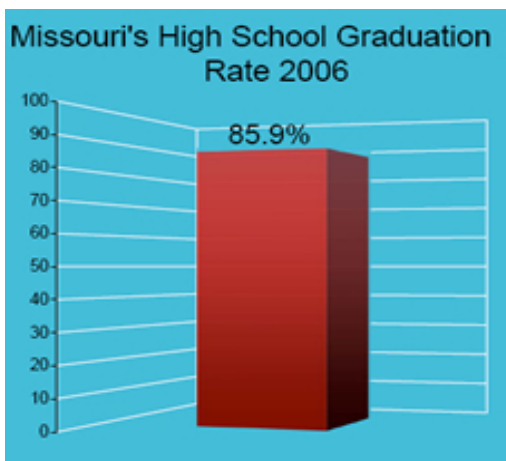
Source: National Assessment of Educational Progress (NAEP)

Missouri Graduation Rate

Missouri schools have shown a favorable record of success in the graduation rate of high school students. The following chart shows the percentage of high school students who graduated as reported by the state. The Averaged Freshman Graduation Rate (AFGR) compared the percentage of students who graduated on time. Clearly, Missouri's graduation rate is well above the national average. Even though Missouri is meeting its targeted graduation and attendance targets, Missouri schools have struggled with meeting

the AYP annual proficiency assessment targets in communication arts and mathematics (see Appendix F)

Preparing Missouri Students for Success



Source: Consolidated State Performance Report, 2006-07

Summary of Missouri

Missouri schools did not see the same success as Kansas saw in regard to adequate yearly progress, and the state scored much lower than the national average as well. Missouri's record of achievement in reading and math did not show the same success as Kansas, either. However, even though the percentage of schools attaining proficiency was below the national average, the overall graduation rate of students was above the national average. Missouri's high school graduation is not as high as the graduation rate in Kansas, but it is still well above the national average. Missouri also has done well, especially compared to Kansas, in maintaining its highly qualified teachers in high poverty schools.

The State of Colorado

The Introduction to *The Colorado Department of Education (CDE) 2006 No Child Left Behind Report Card* gives the details of the progress Colorado and its districts

and schools have made in reaching the goals of the federal No Child Left Behind Act (NCLB). The document stated that public reporting is a key component of NCLB, and that only when information and data become public, does it become a catalyst for change. The intent of the NCLB Report Card was to inform parents, teachers, the general public, key policy-makers and other decision makers about the status of education in Colorado in relation to NCLB goals (CDE, 2006).

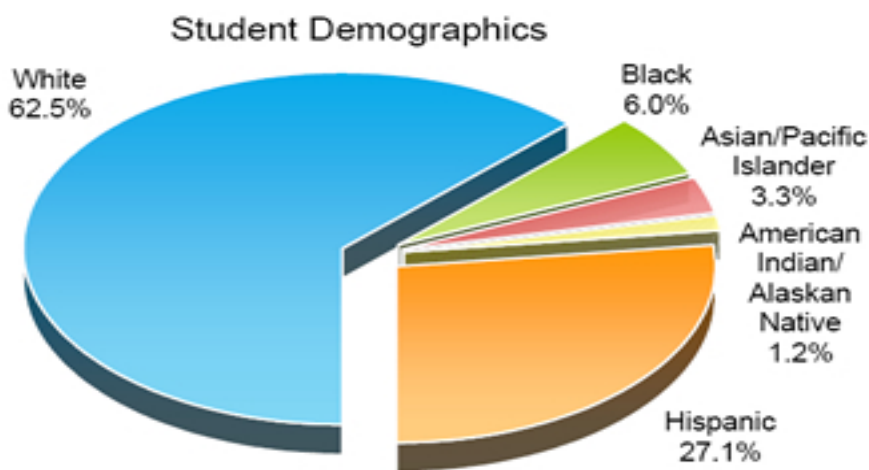
Two of the major goals outlined in the No Child Left Behind Act state that 100% of all students would be proficient in reading and math by 2013–2014, and each state should have all of its teachers attain highly qualified status by 2005–2006. Specifically, the report included assessment data, accountability data—the adequate yearly progress (AYP) results for the state, graduation rate data, federal accountability status of individual school districts in the state, improvement status of Title I schools in the state, and information about teacher qualifications and percentages of classes taught by highly qualified teachers (2006).

The following results and highlights are included in the 2006 Colorado report. The state saw significant gains for English language learners in math at the elementary level, significant gains for Hispanic and economically disadvantaged students in reading at the middle school level, and significant gains for black students in math at the high school level. Additionally, highly qualified teachers were teaching 93% of core academic classes. The state ensured that districts would create a plan to get the remaining seven percent of its teachers highly qualified. Additionally, William Windler, Assistant Commissioner, Colorado Department of Education, stated that all districts in the state were being held accountable to create an Annual Report to the Public, which would

contain more information about how the specific schools and school districts were succeeding (2006).

Student Demographics

In determining factors that contributed to Colorado's willingness to challenge NCLB, as with Kansas and Missouri, one should also consider the demographic profile of the state's student population. The following chart indicates, twenty-eight percent of Colorado students representing minority populations, including a considerably larger Hispanic population (27.1%) than Kansas (11.8%) and Missouri (3.2%), in addition to a 6% Black population. One might question, did this factor contribute to Colorado's resistance to NCLB legislation?



National Center for Education Statistics (NCES), 2004-05

The number of low-income students, students with limited English proficiency, and students with disabilities are additional factors one needs to take into consideration when examining the potential influences on Colorado's desire to challenge NCLB. The next chart indicates Colorado is below the national average of low income students, and

below the national average of students with disabilities. Nevertheless, Colorado is above the national average of students with limited English proficiency.

Colorado Students

	Colorado	United States
Total Students	779,826	49,676,964
Low-Income Students	33.1%	40.9%
Limited English Proficient	12.8%	8.5%
Students with Disabilities	10.1%	13.6%

National Center for Education Statistics (NCES), 2005-06

Even though Colorado has a higher percentage of students with limited English proficiency than the national average, it did score slightly above the national average for schools that made adequate yearly progress. The following chart indicates that 72.8% of Colorado schools made AYP compared to 70% for the national average.

Colorado Schools

	Colorado	United States
Number of Schools	1,707	98,905
Schools Making Adequate Yearly Progress	1,220 (72.8%)	64,546 (70%)
Schools in Need of Improvement	122	10,676
Schools in Restructuring	40	2,302

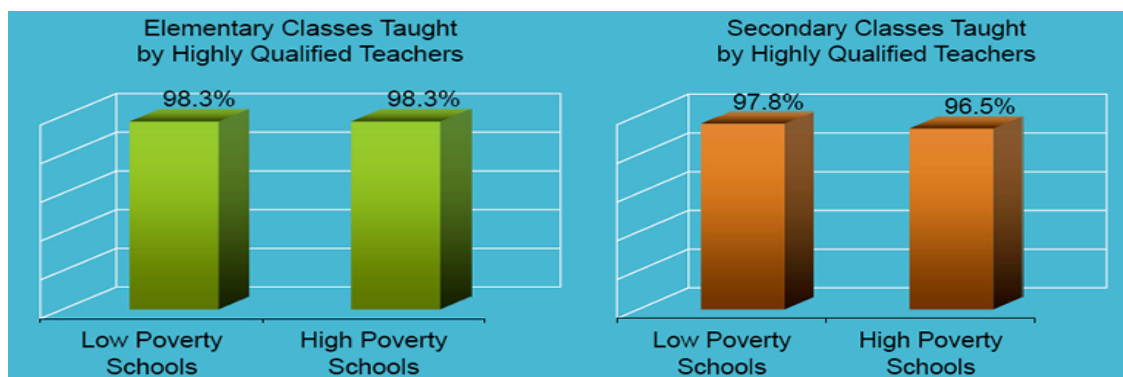
Source: Consolidated State Performance Report, 2006-07

Colorado Highly Qualified Teachers

The following data illustrates the success Colorado has made in attaining the expectations of having highly qualified teachers teaching in every classroom. Still, Colorado legislators were concerned about the continued success in hiring and retaining

highly qualified teachers, and that concern played a role in with their resistance to NCLB. Nevertheless, Colorado has demonstrated a more consistent record than Missouri and a considerably more consistent record than Kansas regarding highly qualified teachers in both low poverty schools and high poverty schools. Over 98% of elementary education teachers were highly qualified teachers in low poverty schools, and over 98% of elementary education teachers were highly qualified teachers in high poverty schools. Even though high school teachers have a variety of courses to teach, Colorado's record, like Missouri's, does not show the discrepancy seen in Kansas. Close to 98% of high school teachers were highly qualified in low poverty schools, and close to 97% of teachers were highly qualified teachers in the high poverty schools in Colorado.

Colorado Teachers



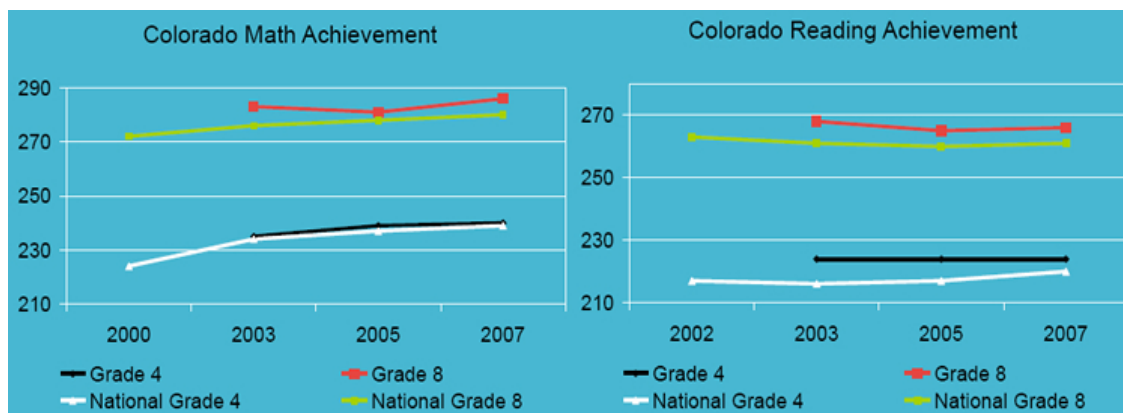
Source: Consolidated State Performance Reports, 2006-07

Colorado's Record of Achievement in Reading and Math

Some have questioned whether or not a state's willingness to challenge NCLB was simply a result of a low record of achievement. It does not appear this was the case with Colorado. The record of success of Colorado, by observing the Record of Achievement in Reading and Math for the state and comparing it to the national record, is recorded in the following chart. Colorado had a higher record of achievement from 2003-

2007, than the national average in reading scores at the 4th and 8th grade levels and greater improvement in math scores at the 4th and 8th grade levels, as well.

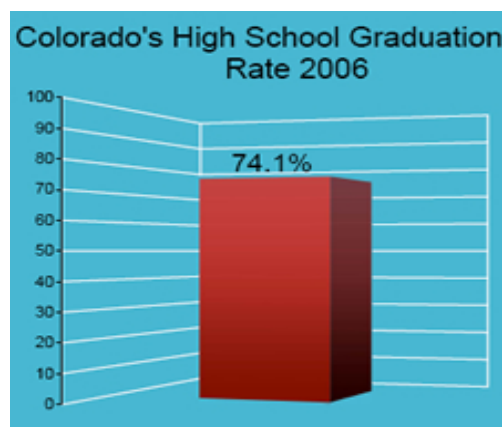
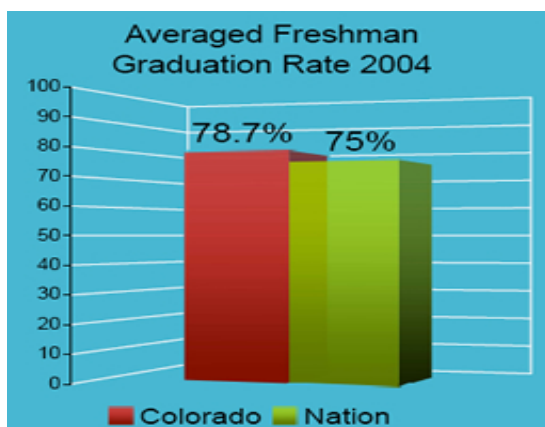
Achievement Trends



Source: National Assessment of Educational Progress (NAEP)

Colorado's Graduation Rate

With graduation rates used as an indicator of achievement among local school districts, Colorado schools have seen success in their graduation rate. In preparing Colorado students for success the following information shows the percentage of high school students who graduated as reported by the state. The Averaged Freshman Graduation Rate (AFGR) compared the percentage of students who graduated on time. As shown below, Colorado's graduation rate ranks above the national average.



Source: National Assessment of Educational Progress (NAEP)

Summary of Colorado

The state of Colorado has made gains in reading and math in reference to English language learners, Hispanics, and disadvantage students. With Colorado's significant population of Hispanic students and students with limited English proficiencies, the state might have to consider if it will be able to maintain that success. Colorado has also seen success in attaining highly qualified teachers, although legislators were concerned about having adequate funding to continue with that success.

State to State Comparisons

The following state to state comparisons give an overview of the Fiscal Years 2008–2010 and illustrate what the future may hold concerning funding for public education. Kansas, Colorado, and Missouri allocations for the fiscal Years 2009 and 2010 are preliminary estimates and were simply determined by current available data updated in 05/07/2009. The U.S. Department of Education offered this disclaimer: “The data on these tables are for information purposes only and do not constitute any binding agreement on behalf of the U.S. Department of Education.” The U.S. Department of Education also stated, “Funds included in the State tables are for programs that allocate funds to States using statutory formulas. The totals do not reflect all Department of Education funds that a State receives. States and other entities may also receive Department funds awarded on a competitive basis” (US Department of Education, 2009). The following state comparisons show state subtotals for elementary and secondary education programs (2009).

Proficiency Measures

Attaining proficiencies in reading and math through 2014 are troubling for some

legislators to come to grips with, especially when these proficiencies are used to determine if funds will be cut that assist in adequately funding public education in their state. The following chart shows a comparison of these three states meeting NCLB's proficiency goals for reading and math. As indicated, Missouri lags behind Kansas and Colorado in reading and math proficiency at the 4th and 8th grade levels. The gap increases when comparing Missouri to Kansas in math proficiencies. Missouri falls to 13% lower than Kansas at the 4th grade level, and 10% lower at the 8th grade level in math (2009).

Proficiencies	Colorado	Kansas	Missouri
NAEP Performance – 2007	Percentage	Percentage	Percentage
Grade 4 Reading Proficiency	36	36	32
Grade 4 Math Proficiency	41	51	38
Grade 8 Reading Proficiency	35	35	31
Grade 8 Math Proficiency	37	40	30

Graduation Rate

NCLB also requires all high schools to meet state graduation rate targets in order to achieve AYP. There is not a significant difference in the graduation rate between the three states in the following table. However, Missouri does have a slightly higher averaged freshman graduation rate than Kansas has, by 2.5%, and than Colorado, has by 1.7%. While attaining state graduation requirements might impact some states resisting NCLB, it does not appear that this is a concern for the three states in this study (2009).

Graduation Rate	Colorado	Kansas	Missouri
Cumulative Promotion Index (Urban Inst.) (%)	74.6	74.4	75.0
Averaged Freshman Graduation Rate (NCES) (%)	78.7	77.9	80.4

Population

When examining the influences of states that have resisted NCLB, one might also consider whether the differences in the student population or the overall population of the state could be factors for resistance. In the following data, the population of the state of Kansas is considerably less than that of Colorado and is less than half the size of Missouri. Enrollment figures indicate that Kansas has a significantly lower number of students in attendance than Colorado and close to half the size of Missouri. Even with that said, Colorado's student/teacher ratio is higher than Kansas or Missouri. With the economic conditions schools are facing, Colorado will have to consider increasing its high student/teacher ratio even more. Also, when choosing states for this study, even though there are some commonalities with Kansas bordering Missouri and Colorado, the population differences of these three states were taken into account for consideration as a potential factor in determining NCLB resistance (2009).

Population Profile	Colorado	Kansas	Missouri
Overall Population (2008)	4,961,794	2,797,699	5,919,054
Student Enrollment (2007)	794,026	469,506	920,353
Students Per Teacher	16.9	13.3	13.7
Students with Special Needs Index	n.a.	29.6	36.3

Demographics

With demographic variables being a potential indicator of a state's resistance to NCLB, it would be prudent to take a look at those differences. These three states differed

in their minority population enrollment as indicated in the chart. Missouri's population of White students was 15% greater than that of Colorado, and yet Missouri's Black population (18.1%) was three times greater than that of Colorado (6.0%). On the other hand, Colorado's Hispanic population was significantly higher than the Hispanic population of Kansas, and more than eight times greater than Missouri's Hispanic population. Even though the numbers are much lower, one can see that other minority populations of Colorado are larger than those of Kansas or Missouri. There were almost twice as many Asian/Pacific Islander students in Colorado (3.3%) compared to Missouri (1.7%), and there were three times as many American Indian/Alaska Native students in Colorado (1.2%) compared to Missouri (0.4%), but Kansas (1.6%) had the highest number of American Indian/Alaska Native students (2009).

Minority Populations

Enrollment (%) – 2007	Colorado	Kansas	Missouri
White	61.9	73.2	76.3
Black	6.0	8.8	18.1
Hispanic	27.6	12.9	3.4
Asian/Pacific Islander	3.3	2.5	1.7
American Indian/Alaska Native	1.2	1.6	0.4

With the economic conditions the states have faced, it has been more challenging for the state legislatures to adequately fund public education. When comparing 2006 state expenditures, the State of Kansas allocated \$1,200 more per student than Colorado and over \$600 more per student than Missouri. Whether or not each state will be able to adequately fund public education in the future should also be taken into consideration when predicting any future resistance by the states (2009).

State Expenditures

Spending Per Student (\$) – 2006	Colorado	Kansas	Missouri
Operating Expenditures	8,166	8,644	8,273
Instructional Expenditures	4,587	5,178	5,021
General Administration Expenditures	126	282	245
School Administration Expenditures	531	506	464

When observing the source of revenue provided to public education for each state, one can see that in Kansas allocation of funds generated by the state far exceeded state generated funding from either Colorado or Missouri. There was a greater amount of revenue of funds generated by local entities rather than in Colorado and Missouri. Kansas also received more federal funding per student than Missouri, and a considerable amount of additional federal funding per student than Colorado received. With an emphasis on local control in Colorado, one can see that a majority of the state's funding comes from local entities, as well does in the state of Missouri. With the responsibility for funding public education with contributions coming from all three levels of government, there have been concerns about the differences in revenue allocated for public education (2009). "There has been considerable debate on how vast these differences can be and when they are justified....The courts, education policymakers, and the finance research community generally find that some variation in funding levels are acceptable, and may be fully justified by district cost differentials" (NCES, 2006).

Source of Revenue

Revenue Per Student (\$) – 2006	Colorado	Kansas	Missouri
Local	4,654 (50.1%)	3,610 (35.0%)	5,547 (57.4%)
State	3,962 (42.6%)	5,761 (55.8%)	3,250 (33.6%)
Federal	681 (7.3%)	951 (9.2%)	866 (9.0%)

The following table compares Colorado, Kansas, and Missouri with the U.S. average. Kansas had considerably less schools compared to Missouri and compared to the national average. Missouri had a greater number of schools compared to Kansas and compared to the national average, yet Missouri schools were less densely populated than Kansas schools and the national average. Missouri having more schools, yet fewer students per school, offers one possible explanation for the number of 2010 school closings in the Kansas City, Missouri, School District during the school year. In reference to Colorado's Hispanic population, one can see the number of Hispanic students is far above the national average even though they have considerably fewer total students than the national average.

State Comparisons

Data	Colorado	Kansas	Missouri	U.S. (average)
Total Number of Schools	1,736	1,428	2,384	1,950
Total Students	794,026	469,506	920,353	966,645
Total Students- Amer Ind/AK Native	9,283	7,700	3,788	11,564
Total Students- Asian/Pacific Islander	26,482	11,761	15,480	44,748
Total Students- Black, non- Hispanic	47,354	41,452	166,957	162,514
Total Students- Hispanic	219,433	60,612	31,693	195,102
Total Students- White, non- Hispanic	491,474	343,520	702,435	537,145
Total Teachers	46,973	35,297	67,398	62,360
Pupil/Teacher Ratio	16.9	13.3	13.7	15.5

Summary Remarks

The struggle in public education between the various levels of government seems to be a common thread that has impacted NCLB resistance by the states. States have had to consider the monetary strings that are attached to federal government policies, because of the state's desire to adequately fund K-12 public education. While some states argued that this federal legislation is not only an unfunded mandate, but it has also been an ineffective method for making a real difference in student achievement. Criticism not only stemmed from the expense that is passed along to the states, but with it came concern that this legislation mandated that every school must reach the unrealistic NCLB proficiency goals by 2014.

With any state-to-state comparisons there were a number of similarities and differences taken into account when examining the challenges each one faced with NCLB legislation. There were a wide variety of factors that were considered when assessing reasons for states resisting NCLB legislation. One of those factors was recognizing the demographic makeup of each state. Was a state more willing to challenge NCLB if it had a higher percentage of minority population, or a higher percentage of students with limited English proficiency, and/or a higher percentage of students with disabilities? Also, did the lack of success with student achievement under NCLB making adequate yearly progress (AYP), or the difficulty of maintaining highly qualified teachers (HQT), impact the states to be more likely to resist NCLB? In addition, did the overall population of the state, the student enrollment figures, the total number of schools, or the graduation rate of the states have any impact on a state's reaction to NCLB? The answers to these

questions are multi-faceted and will be considered while further examining these and other factors that led states to initiate challenges to NCLB.

Chapter Three

Challenges of Federalism

The No Child Left Behind Act (NCLB) has drastically impacted relations between the federal government and state governments in public education. Whether or not NCLB will be here to stay could be determined by state responses in their struggle to meet the requirements that NCLB mandates. Whether or not all or part of NCLB will be reauthorized, the federal government's involvement in public education is a fascinating inquiry in cooperative federalism. What the federal government has learned from the state reactions in addressing public education from the national level is vital to the success of any federal legislation it may provide in the future. In turn, it is vital to the state governments to learn from the federal government's response. This could systematically impact how far states are willing to resist federal legislation in the future.

The politics at the national level of NCLB had a surprising beginning that included a dramatic reversal from the vociferous political polarization that commonly takes place between Democrats and Republicans in the U.S. Congress. A shift to a more amiable bipartisanship effort in support of a reformation of public education perhaps assisted in the initial passage of this legislation. However, the subsequent reaction and resistance from parents, school districts, state legislatures, the National Education Association (NEA), and from the U.S. Congress directly or indirectly has influenced the return to "politics as usual." Both Democrats and Republicans have expressed concerns and criticisms of NCLB at the local, state, and national level. The bi-partisanship on Capitol Hill has gone by the wayside, and finger pointing has returned with concerns by

the states of unrealistic expectations of unfulfilled promises, and a lack of federal government funding for the states and local school districts.

Spending Clause: U.S. Court of Appeals

One of the biggest legal challenges to NCLB was handled by the U.S. Court of Appeals for the 6th Circuit. The question revolved around whether a group of school districts had a legitimate case challenging NCLB as an unfunded mandate. Representing school districts from Michigan, Texas, and Vermont, Robert H. Chanin, NEA general counsel, argued that “States and school districts are prisoners of this law... There are obligations that are placed on them by the No Child Left Behind Act, but the money is not enough to implement those requirements” (Walsh, 2009). U.S. Department of Justice lawyer Alisa B. Klein, representing former Secretary of Education Margaret Spellings, argued that the federal government “doesn’t impose mandates one way or another on how a state spends its money” (2009) under NCLB. To suggest that the states would be provided the necessary funds for implementing NCLB, to the extent that the states and local school districts would be exempt from any assistance in funding, was untenable. She argued that, “No one thought Congress was going to pay the full cost of what the No Child Left Behind Act was meant to do” (2009). At issue was the Spending Clause of the US Congress. The 6th Circuit Court agreed to rehear the case because of inconsistencies in the language determining whether or not the states would accept NCLB federal funds. The provision in question stated, “Nothing in this act shall be construed to ... mandate a state or any subdivision thereof to spend any funds or incur any costs not paid for under this act” (2009).

It would seem this language could be interpreted to allow states and school districts to “opt out” and not be burdened with additional unwanted costs of NCLB. There seemed to be a history and a precedent set with this type of language as part of federal education statutes stemming back to the reauthorization of the Elementary and Secondary Education Act in 1994. The NEA’s case appeared to have some support as a result of the 2006 U.S. Supreme Court decision in the *Arlington Central School District v. Murphy* case. The Court’s decision “reiterated in strong terms a doctrine that in spending-clause legislation, Congress must clearly express its intent to impose conditions on the grant of federal aid so the states may knowingly decide whether to accept the money” (Walsh, 2009). Even though NEA argued that Congress did, in fact, enact NCLB under the spending power clause, and that the 6th Circuit panel cited the Arlington ruling “that the NCLB act does not give the states clear notice of their obligations, in large part because the unfunded-mandate language sends the message that states and districts would not have to spend their own money,” (2009) the argument did not make much headway. Some of the judges argued that these underfunded-mandates applied specifically to NCLB’s Title One. For example, Judge McKaegue stated that the provision suggested “Congress anticipated there may well be costs not reimbursed” for districts and states under the law, and Judge Sutton suggested that “your linchpin is ambiguity” in the unfunded-mandates provision, and that in this case, suggests the agency gets to fill in the gaps” (2009). Even so, the Court did question the potentially misleading wording of under-funded mandates. Klein argued that the provision was to assist the states, not to burden them. The provision actually applied to other sections of NCLB other than Title 1, dispersing grants to the states. The intent was that the money for the states would not

have strings attached, with additional costs to the states from the Department of Education. Some of the judges also inquired about the reason behind other states (including Kentucky, Michigan, Ohio, and Tennessee) in the 6th District not joining in the school district's lawsuit [while at the same time noting the state of Connecticut had filed one against the federal government] (2009). Connecticut filed a lawsuit against the Department of Education because of the lack of appropriate NCLB funding to pay for the obligatory ongoing student assessments. Yet, in other states it was not merely money that was unsatisfactory. In the State of Utah, their legislature took issue with a fundamental objection to the national government trespassing on its state's sovereignty in education matters. It suggested that the national government clearly had crossed the line of power and responsibility that is supposed to be reserved for the states (Loveless, 2006).

Unrealistic Expectations: Kansas

Policy Today editors interviewed John Vratil, chair of the Senate Judiciary Committee and the vice-chair of the Senate Education Committee of Kansas. Vratil mentioned that ensuring a nationwide social and economic society was identified as a priority of policy makers. Yet, Vratil made a distinction between ensuring equality and offering equality for providing opportunities for every student to succeed. He stated, "I think it's an extremely important distinction to make because many people will look at discrepancies in student performance and attribute it to inequality" (Policy Today Editors, 2007). When asked what role the federal government should play in regard to educational policy, he saw the federal government in a somewhat limited role, providing financial resources in those areas it feels are neglected or of the greatest priority, and providing research to enable states to use best practices in education. He stated, "What I'm fearful

of is a gradual takeover of our educational system by the federal government, which I believe would be absolutely disastrous” (Policy Today Editors, 2007). It would seem that there was somewhat of an agreement in society with the general premise of NCLB that no students should be left behind in any American educational institution. One major obstacle Vratil pointed out with NCLB, however, was that even though there was an agreement with the overall goals, he did not know of anyone with any knowledge of the education system who believed that 100% proficiency is practical or achievable. Vratil asserted, “I think there is a much better way of achieving the goals of NCLB in a more realistic, flexible manner in which you really have a partnership between the states and the federal government,” and currently that partnership does not exist, because “the U.S. Department of Education and the states are at odds, more often than not, with one another” (2007). Vratil suggested that the breakdown between the states and the federal government was that, “many of the requirements of NCLB are unrealistic and others are completely disingenuous or misguided,” (2007) even though the disaggregating of student assessment data has merit, there were still unrealistic expectations.

Vratil offered an example of this with one of the subgroups being tested, which are children who speak English as a second language. He stated, “...NCLB requires...non-English-speaking students to be 100% proficient by 2014...that's so absurd as to be laughable, because once those students achieve proficiency in English, they drop out of the group” (2007). He argued that “by definition the only students in that group are students who are not proficient. How can you achieve 100% proficiency for students who are in that group because they are not proficient?” He asserted that the U.S. Department of Education will not acknowledge this as a problem that needs to be

addressed. When Secretary of Education Margaret Spellings visited Kansas to promote the success of NCLB, she acknowledged that this part of the law was flawed. “The requirement that states identify persistently dangerous schools hasn’t worked well,” Spellings said in a roundtable discussion with educators, business leaders, and Kansas officials (Hoff, 2008). Vratil added that if the goal of NCLB, from its inception, was to achieve total equality, then it was unrealistic. He suggested that if the goal of NCLB was equality of opportunity, and if that specific principle guided the policy, NCLB would have been structured to include an emphasis on educational flexibility encompassed in a federal/state partnership.

National Government Leverage and Incentives

The additional involvement by the national government in public education brought with it a concern that NCLB gave permission to the national government to force the states to comply with its demands, using resources as leverage. This leverage, through an incentives approach by the national government, clearly challenged the concept of constitutional reserved rights of the states in the U.S. federalism system of government. The fundamental concept of the state’s power to govern public education without federal government interference was at stake. Offering incentives suggested that the enticement of federal money would provide adequate funding to produce the desired NCLB outcomes that no child would be left behind. Of course, if the schools did not meet the expected outcomes, then sanctions could be placed against these schools, including a potential reconstitution of those schools.

As a result of adequate yearly progress (AYP) requirements of reaching student achievement in targeted subgroups, those schools that were in desperate need of these

monetary incentives could face the threat of sanctions placed against them. Perhaps this merely suggested that democracy was at work, or perhaps it was “Darwinian thought” that the fit schools would survive. If it was a “survival of the fittest mentality” being subscribed to the schools within those states, then one must consider what exactly is at stake and what will be the cost to the states’ educational system. Testing of individual students’ improvement from year to year should be considered when examining the defects and/or successes of each state’s educational system. Targeting the deficiencies of individual students (instead of simply comparing one grade level to the next grade level, year after year) would seem to offer a more reliable and valid barometer for measuring whether a child has been left behind. The outcomes and the benefits to the individual student should be the focus in the decision making process, not a comparison of the data of grade levels whose individual students vary year to year.

It seems that experts would agree that NCLB is the most significant revision of federal education policy in decades. There are those, however, that question whether NCLB represents a vastly new policy or simply “the next phase in the evolution of that policy” (McDonnell, 2005, p.19). Even though McDonnell agreed that NCLB expanded federal regulation, she concluded that NCLB merely “reflects an evolution of the federal role rather than a radical redefinition, with NCLB's design only possible because of profound changes in the state role over the past 20 years (2005, p.19). Whether NCLB merely reflects an evolution of federal control rather than a radical redefinition, it certainly has had a profound impact on the states’ role in public education with its obligatory testing and accountability expectations.

In contrast to McDonnell, Patrick McGuinn argued there is more at play than testing and improving achievement scores for students. McGuinn suggested that the 2002 No Child Left Behind (NCLB) law has dramatically reshaped the federal role in public education, permanently, establishing a sense of federal activism in the educational systems within the states. NCLB has been quite a contentious issue between the states and the national government, but if NCLB actually reaches its achievement goals for students, it appears that unless states respond with actions and not merely words of threats, then the role of the federal government in public education is here to stay (McGuinn, 2005, p. 41).

Defects in NCLB

The standards-based reform initiative in education was an attempt to address the “big hole at the center of education,” perpetuated by a basic lack of understanding and agreement about the required skills and content a student should master (Kahlenberg, 2008). Kahlenberg suggested that NCLB does depart from the standards-based reform movement in significant ways. He proposed solutions to three major defects with NCLB, and two of them are worth mentioning in this context, namely “underfunding NCLB; and the flawed implementation of its standards, testing, and accountability provisions” (2008).

To illustrate one of the defects, he pointed to the ongoing debate over inadequate funding, and the political nature of the debate that continued to pit Democrats against Republicans. At issue for the Democrats was the gap between the approved levels of funding and appropriations (which reached \$70.9 billion by fiscal 2008), and for the Republicans, it was the issue of the authorization ceiling levels that are typically not met

by those appropriations. Certainly the appropriation of funds has to be considered for each state to reach their intended outcome of making all students academically proficient by 2014 (Kahlenberg, 2008).

According to research compiled by Duncombe, Yinger and Lukemeyer, “federal funding would have to multiply many times over to help districts succeed in meeting even the intermediate goals of the legislation” (Duncombe, W., Lukemeyer, A. & Yinger, J., 2006). He suggested that even if the goal was lowered from reaching 100% proficiency down to 90% proficiency, the costs would drastically vary widely from state to state depending on several factors, including “the level of performance standard adopted, the local cost of living, and the demographic makeup of the student population” (Kahlenberg, 2008).

They reviewed the relationship between spending and performance of four representative states, and found that even if states increased the funding by fifteen percent and if, in turn, their school districts became fifteen percent more efficient at spending resources, “Federal Title I aid would have to be increased by 18 percent in Kansas, 129 percent in New York state, 547 percent in California, and a whopping 1,077 percent in Missouri to meet the goal of 90 percent student proficiency” (Kahlenberg, 2008).

A second deficiency Kahlenberg addressed was, unlike standards-based reform, NCLB does not have in place adequate and coherent standards, testing, and an accountability system. NCLB is riddled with a myriad of problems including:

- failure of states to develop clear and rigorous content standards;

- poor quality of most state assessments making “teaching to the test” an issue, rather than reaching the desired outcome;
- varying state-by-state performance standards;
- an arbitrary single standard of proficiency that is too high for students with disabilities, but not high enough for gifted students;
- incentive to focus on students who are close to reaching proficiency, to the detriment of those far below or above the bar; and
- failure to isolate the effects of family and the effects of school on student achievement. (Kahlenberg, 2008)

With so much at stake, if these flaws are not addressed, Kahlenberg stated that NCLB “could undermine the standards-based-reform movement” (Kahlenberg, 2008). He stressed that those who have criticized standards-based reform feared it was designed to facilitate privatization, and yet NCLB’s flawed system seemed to be setting up public schools for failure by requiring 100 percent student proficiency by 2014, without providing adequate resources, by failing to establish an accurate means of assessments, and by holding school districts accountable for factors beyond their control (2008).

Growth Models and Accountability Systems

In contrast with Kahlenberg’s assessment of NCLB, in the final policy speech of his presidency, President Bush stated NCLB was probably the most important domestic accomplishment of his two terms in office. On January 8, 2009, the seventh anniversary of the signing of NCLB, President Bush boasted, “The most important result of the No Child Left Behind is this: Fewer students are falling behind, (and) more students are achieving high standards” (Hoff, 2009). Yet, even with this claim, changes in the

accountability systems of some states were being offered at the same time by outgoing Secretary of Education, Margaret Spellings. With a pair of executive actions, she gave an additional four states “the authority to use so-called growth models for their accountability systems and three others the chance to differentiate the interventions for schools failing to make adequate yearly progress, or AYP, under the law” (Hoff, 2009).

The Bush administration put the final stamp on NCLB, attempting to lay the groundwork for the future administration. There were as many as ten states given the opportunity “to create alternative interventions for schools that have failed to meet their achievement targets” under NCLB. These states “could offer intensive interventions in schools with persistently low achievement levels and target more specific help to schools that are closer to their achievement goals” (2009). Many educators and policymakers indicated this new policy would not be enough to overcome the needed changes in NCLB and questioned whether or not this was the best approach the U.S. Department of Education could make. They suggested it would be necessary to make additional refinements based on the needs of the individual schools, and they questioned whether the U.S. Department of Education’s proposal for so-called differential accountability was the best approach. Some states, like South Dakota, planned to wait to see what changes the Obama administration would make with some aspects of NCLB (Hoff, 2008).

Nevertheless, Spellings' actions assisted the way seven states implemented NCLB in struggling schools. A fifty-eight page document explained what districts needed to do in communicating the opportunities to be offered to students and their parents. Some of the requirements included notification to parents of tutoring and transferring opportunities. Spellings' decision about growth models assisted Colorado, Minnesota,

Pennsylvania, and Texas to change the way they determined AYP in the upcoming school year. These states joined 11 other states that were using methods based on the growth of students' achievement. "The growth models determine whether schools make AYP based on the academic growth of individual students or cohorts of students. The standard accountability measure under the NCLB law compares the achievement of one group of students from a particular grade against the results of the cohort from the previous year" (Hoff, 2009).

Shortly after she became Secretary of Education in 2005, Spellings indicated she would approve states' growth-model plans that adhered to many important aspects of NCLB (Hoff, 2009). Components included the "annual assessment of students' reading ability and mathematical skills in grades 3-8 and once in high school; the disaggregation of student scores into subgroups representing races, ethnic minorities, students with disabilities, and English-language learners; and tracking student progress toward the goal that all students be proficient in reading and math by the end of the 2013-14 school year" (Hoff, 2009).

As far as standardized testing was concerned, US Senator Michael Bennet, Colorado, suggested that student testing would not necessarily make teachers more effective, or would even be useful as a teaching tool for attaining the intended outcomes. He suggested one problem with standardized testing is it asks the wrong questions. Bennet stated, "In the past, one year's fourth-grade classes were compared to the previous year's fourth-grade classes without considering whether or not there was growth for individual kids from fourth to fifth grade, Bennet said. Schools should concentrate on the growth of children, not just the scores on tests" (Barker, 2009). Bennet also noted

that, “The new Colorado growth model is showing that some kids in schools which had high scores were not growing in their knowledge as much as kids in schools with lower scores” (Barker, 2009).

Critics of these growth models argued that these changes will not remove doubts over the assumption that schools can assure that all students become proficient under NCLB legislation. In reaction to this new policy, David Shreve, the federal-affairs counsel for education for the National Conference of State Legislatures, simply stated, “I see these efforts by [Ms. Spellings] as a way of fending off the fundamental problem that everybody agrees with, which is that AYP sucks” (Hoff, 2009). Originally, Spellings established a pilot project that allowed states to choose how they would intervene with struggling schools. These states could “differentiate schools' remedies based on how far schools are from meeting AYP goals, with the schools farthest behind facing more aggressive changes” (Hoff, 2009). On Jan. 8, Spellings stated that Arkansas, Louisiana, and New York would join this project. Then, in July, Spellings approved six additional states participation. Even though there were other states that applied for approval with this program, Spellings denied states she did not consider good enough to approve (Hoff, 2009).

Critics also argued that this new pilot project was too limited to make the changes with the schools that were having difficulty in its implementation. In order for a state to qualify for the “differential accountability” pilot project a state must have met one of the following requirements: their state standards and tests had to have been approved by the U.S. Department of Education, or there could not have been any “significant, or deficient, findings from the federal monitoring of its No Child Left Behind Act programs” (Hoff,

2009). Mary Kusler, the assistant director of government relations of the American Association of School Administrators, stated, “This law is never going to be fixed by tinkering around the edges...We’re tweaking the heck out of the law and not dealing with the underlying issues” (Hoff, 2009).

However, Spellings suggested that this new project was similar “to an Education Department pilot project to allow districts to make accountability decisions based on overall student growth” (Hoff, 2007). Spellings approved nine states for the so-called growth models and announced that she would expand that project to additional states that qualified. This project allowed these latest states the chance to use an alternative way to improve failing schools that gave the states an opportunity to make adequate yearly progress (AYP) toward the goal of all students attaining proficiency in reading and mathematics by the end of the 2013-14 school year. The differential-accountability pilot seemed to be a step in the right direction, addressing concerns and resistance of the states, allowing some states additional options, and flexibility in overcoming obstacles in meeting the requirements for NCLB (2007).

Problems with Overhauling NCLB

Part of the problem in undertaking the overhaul of the NCLB four-decade-old Elementary and Secondary Education Act for states and their respective school districts was adhering to the interventions for schools that failed to make AYP. Unfortunately, NCLB does not distinguish between schools that fail to make AYP by a wide margin across all students in each of the subgroups, and schools that are considered failing schools because of a small number of students in one or two subgroups. Subgroups can include “children with disabilities, English-language learners, as well as racial, ethnic,

and low-income categories” (Hoff, 2009). If a school fails to make AYP for two consecutive years, then the school district must offer students the opportunity to transfer to another public school, and if the school fails to meet the standard another year, then they must provide up to twenty percent in funding from its federal funds to pay for tutoring of its students. It makes no difference if a school barely misses making AYP or if it misses the mark by a wide margin.

In January, 2009, The Editorial Projects in Education Research Center reported in Education Week that “nearly 30,000 schools in the United States failed to make AYP during the 2007-08 school year” (Hoff, 2009). That was an increase of 28 percent for the number of schools with comparable data from the 2006-2007 school year. Of those 30,000 schools, nearly half of those schools failed to meet AYP for at least two consecutive years. This means that approximately one in five of public schools throughout the U.S. are in “some stage of a federally mandated process designed to improve student achievement” (2009). The number of schools that were possibly facing sanctions corresponded to a 13 percent increase for states with comparable data covering the 2006-07 school year. There were also twice as many schools from the previous year (3,500 schools, which is approximately four percent of all schools), that would be facing the more serious interventions of the law. Critics of NCLB assert it is inevitable that the number of schools failing to make AYP will continue to rise because of the law’s unrealistic requirement that student achievement increase to the extent that all students are proficient in reading and math by the end of the 2013-14 school year (2009).

Even though President Bush and Secretary of Education Spellings were steadfast in their defense of NCLB’s proficiency goal, President Barack Obama and Congress may

revise or extend the goal as they work on renewing NCLB. Some critics suggested NCLB would systemically make sure every school fails. Robert L. Linn, Professor Emeritus of Education, University of Colorado at Boulder, stated “The increases that are demanded by No Child Left Behind are...larger than anything we’ve ever seen in the past or that you see in other countries” (Hoff, 2008). He argued that public schools will fail to make their achievement goals between now and NCLB’s target date (2008).

However, supporters of NCLB indicated NCLB has caused many schools to take steps for school improvement. For example, Gary M. Huggins, the director of the Commission on No Child Left Behind of the Aspen Institute, a Washington-based think tank, stated “the relatively modest increase in schools subjected to the NCLB law’s sanctions by missing their achievement goals for two or more years suggests that educators are taking action to address the problems in (those) schools” (2008).

Under the NCLB law, a school must make AYP in their scores on reading and mathematics tests, given annually in grades 3-8 and once in high school. In order to make AYP, “a school must meet achievement targets for its student population as a whole and for each several demographic ‘subgroups,’ such as racial and ethnic minorities, students with disabilities, and those who are eligible for services as English-language learners” (Hoff, 2008). Schools must adhere to the AYP goals set by their respective state in meeting the goal that all students be proficient in reading and math by the end of the 2013-14 school year.

Identifying Schools in Need for Improvement

The national data suggested there was a continual increase in the number of schools failing to make AYP, but “state-by-state results show that states’ policy decisions

can skew the results” (Hoff, 2008). For example, in South Carolina, 80 percent (the highest percentage of any state) of its public schools failed to make AYP in the 2007-08 school year. Yet, one reason for such a high failure rate could be attributed to the addition of new schools being evaluated for AYP. Such a high percentage could also be the result of a higher set of standards that are more challenging than those of most states. In addition, some researchers have identified the state of South Carolina and the state of Massachusetts as having the most challenging standards, evidenced by comparing student results of their state tests with their students’ results on the National Assessment of Educational Progress. If a state implemented high standards, then hitting a ceiling effect came much sooner as well (Hoff, 2008). Other states (23 of them) seemed to set low achievement targets in the early years of NCLB, which consequently contributed to a drastic increase in the number of schools that failed to reach AYP in the 2007-08 school year. Perhaps those states made the assumption that test scores would be able to rebound from lower targets to impact and demonstrate growth in student achievement by the 2007-08, but AYP results did not reflect that assumption. One example of this would be California, which had “a dramatic increase in the percentage of schools failing to make AYP, from 34 percent in the 2006-07 school year to 48 percent in 2007-08” (Hoff, 2008).

The process in identifying those schools for improvement was complex and multi-layered. First, a school was tagged with the label “in need of improvement” when it failed to meet its AYP goal for two straight years. Then, when that school failed to make AYP for a third consecutive year, it was required to offer students the chance to transfer to a different public school. This became the first step in an annual series of steps for implementing student improvement. Prior to that, schools spent money from NCLB Title

I program of aid for disadvantaged students to pay for tutoring and then eventually took steps to make school improvement. If schools still had not made AYP after five years, and carried the label “in need of improvement,” then the respective school district had to make drastic changes, including the possibility of replacing staff or the possibility of turning its schools into charter schools.

Piché of the Citizens’ Commission on Civil Rights, stated that, “If they’re in year five of improvement...something is seriously wrong” with the schools “and it’s almost never the student” (Hoff, 2008). Yet, “To have 4 percent of schools at that stage seven years after the law’s enactment is a relatively small number,” Piché said. The state and the school district will be required to make a concerted effort to help those failing schools before they reach the fifth year of the school improvement process, because the longer that a school stays “in need of improvement” then “the less likely they are to get out,” she said (Hoff, 2008).

State Dilemmas for Failing Schools

In order to change the direction of South Carolina’s 80 schools that were in their fifth year of the school improvement process, there was an indication of a focused effort at the state and local level indicated by the joint work of state officials and school district leaders. Trying to repair the schools, at that stage, became the focal point of South Carolina’s task. State officials worked closely with district leaders and higher education officials to concentrate on remedies for school improvement at the local level, including the recruitment of “effective principals and teachers” hired to work in those schools. Unfortunately, the state put a lot of resources into improving those eighty schools, yet

neglected to assist the schools that were having trouble making AYP in just one or two sub-categories of students, and in effect, ignored a large group of schools (Hoff, 2008).

Another example of a state with failing schools under NCLB legislation took place in Baltimore, Maryland. In Maryland, the largest percentages of the state's 93 schools that were in the fifth year of improvement were located in Baltimore. The state worked closely with school district leaders, aggressively closing failing schools, and then reopening those schools with new teachers and administrators. Nancy S. Grasmick, the State Superintendent of the Board of Education, indicated that the State Board had to approve the improvement plans of those failing schools. She asserted that the state would be taking an aggressive stance and stated, "There's an energy of not accepting chronically low-performing schools as business as usual... We're trying to ferret out the critical mass of effort needed to turn around those schools" (Hoff, 2008).

Discrepancies between States

Although Kansas, Missouri, and Colorado have not had such drastic measures affecting their schools, there was a concern about the discrepancies in academic and accountability standards that existed from state to state. Neal McCluskey, stated that the Thomas B. Fordham Institute's report found that academic standards vary so widely from state to state that it has created an "accountability illusion" (McCluskey, 2008). Fordham President, Chester Finn, and Vice President, Michael Petrilli, proposed that the solution to this dilemma was not to scrap NCLB or even to federalize tests and standards. They argued that the "Obama Administration and Congress should create incentives for states to voluntarily sign on to rigorous, comprehensive common standards and tests" (McCluskey, 2008). After the results were published, the states would be allowed to

decide what to do with those schools that did not meet the standard. This would ensure greater transparency and reinforce state responsibility, rather than federal responsibility. “Best of all,” they note, “it would end the gamesmanship that has characterized the federal-state relationship for the past seven years” (McClusky, 2008).

McClusky, on the other hand, took issue on many fronts with Finn and Petrilli arguing against what they considered an ill-advised solution of a nationalizing-without-federalizing approach in fixing NCLB. He asserted that creating incentives that federalized tests and standards equated to monetary incentives. He stated that “One need look no further than the last forty-plus years of federal involvement in education,...to see clearly that Washington has constantly used monetary ‘incentives’ – change your laws or you don’t get your taxpayers’ dollars back!...which it has no constitutional authority” (McCluskey, 2008). By stripping away the reserved powers of the state, incentives also translated into federal control by transferring the power of public education to the national government. He concluded that NCLB is a failure, and that, “it should also be obvious that further centralizing political control would just be dumping more water into the already submerged ship” (2008).

Discrepancies in Academic Standards from State to State

Additionally, a national study issued by the Thomas B. Fordham Institute found that under NCLB some schools that would be considered a failing school in one state would be considered proficient in meeting AYP standards by receiving a passing grade in another state. The Fordham study measured test scores of 36 elementary and middle schools against accountability rules in 28 of the 50 states, and found that if a state maintained a higher and more rigorous standard, it would make it very difficult for those

schools to meet adequate yearly progress in those states. Finn argued that these varying academic standards were unacceptable, unfair, misleading, and they created an accountability illusion. The results in the study emphasized the wide variations and discrepancies that exist in academic standards from state to state, and they came at a time when the new administration was encouraging the state to adopt common standards (Thomas B. Fordham Institute).

Secretary of Education, Arne Duncan stated, "I know that talking about standards can make people nervous, but the notion that we have 50 different goal posts doesn't make sense" (Associated Press, 2009). He suggested that a high school diploma needs to have the same meaning from state to state, and that every state must meet those same benchmarks that could compete with every other state, as well as being able to compete with international standards. It appeared, though, that the new administration would not force states to comply with the same national standards, rather they would suggest leaving it up to the states to develop new state standards within their respective states. Even though the proposal and recommendation by Congress to rewrite NCLB in 2007 stalled, legislation was pushed to offer incentives to schools that raised standards by setting aside the seemingly inflexible annual yearly progress structure. The economic stimulus bill also created a \$5 billion incentive rewarding states that increased the quality of their state standards (2009).

Change in Administration: A Hope for the Future?

There were also those educators who were hoping that, with a newly elected President of the United States and a new executive administration in the federal government, a change in administration would also bring with it a new direction of

positive change for public education. However, early on in the new administration, one might have questioned if the direction the new administration was taking would continue on the same path as previous years of NCLB.

Following Linda Darling-Hammond's decision to return to Stanford University, forgoing a role in the Obama administration, Gary Orfield and Diane Ravitch criticized Secretary of Education, Arne Duncan's direction for public education. Ravitch stated her displeasure in the Obama Administration in not seeking the expertise of the only educator "close to Obama who actually has experience in the schools--his chief policy advisor Linda Darling-Hammond" (Ravitch, 2009). In fact, she had been "demonized by the new breed of non-educators and their media flacks" (2009). Ravitch suggested that apparently there was no room "in this administration for someone who had been deeply involved in school reform for many years, not as an entrepreneur or a think-tank expert, but as an educator" (2009).

Ravitch's criticism gave insight into the ongoing problems with NCLB, and she offered ideas about what needed to be addressed with legislation in public education. She referred to NCLB as ruinous, because of its costly failure on many levels. She stated that, "On national tests, given by the U.S. Department of Education, student achievement is either flat (as in 8th grade reading) or has improved less than in the days prior to NCLB (as in every other grade and subject tested)" (Ravitch, 2009). However, she maintained that this problem goes way beyond failing students, and asserted that "NCLB is punitive, has caused nearly 40% of the nation's schools to be labeled 'failing,' and has set the nation on a course in which nearly all of our schools will be declared 'failures' within the next five years (2009).

Her criticism went beyond the failures under the former administration and took issue with the current administration as well. She declared that it was reasonable for educators to assume that this new administration would be one of “change we can believe in” for support of public education. The promise of sweeping changes by this new administration, educators construed as an offering to implement change in the former policies of NCLB, or perhaps, to offer a complete reversal of the former administration’s policies of NCLB. There may have been change in the administration, but Ravitch stressed that there was no indication of the support necessary to make changes in NCLB at that point in time.

She also maintained that Arne Duncan was simply a mirror image of Bush's Secretary Margaret Spellings. Her criticism of Duncan’s visit to a New York City charter school drove home her point. She concluded “He declared that the nation's schools need more testing, as though we don't have enough information already to act on our problems. He declared his support for charter schools, where only 2% of the nation's children are enrolled” (Ravitch, 2009).

Even though, admittedly, Gary Orfield and Diane Ravitch are at polar points on the political spectrum, Orfield agreed with the notion that someone with Linda Darling-Hammond’s expertise and knowledge-base of the profound racial and ethnic inequalities in education “is very badly needed near the center of this administration if it is to have the kind of accomplishments in education the country urgently needs and to avoid disillusioning large number of its very strong supporters” (Orfield, 2009). Orfield reiterated the importance of having a qualified educator in the current administration in order to impact the kind of impetus expected by electing a new administration with the

following comment, “Linda's was a voice inside the campaign that many people saw as a great sign of hope for a policy that would positively work with educators, take research seriously, end the attacks on teachers, and reinvigorate the schools and educational professionals” (Orfield, 2009).

Orfield exclaimed that educators expected much more support, and that this administration's education policy lacked the progressive education philosophy based on research and experience that would produce valuable progress in public education. He went on to state that there were “basic structural flaws in NCLB which are often ruining the potential positive impacts of some other parts of federal education law...serious problems, such as dropouts, narrowed curriculum, increased segregation by race and poverty, and real high school reform, that have not been addressed at all.” While the current administration continued to support the former regime, he offered that the new administration could ill afford to alienate “education leaders and organizations that strongly supported its campaign and feel now that they are being played by a small group of Washington lawyers and advocates who think that they can drop the mandate for change” (Orfield, 2009).

Public Confidence in the Governments of the American Federal System

With the ongoing power struggle between the states and the federal government in public education concerning NCLB and national standards, it would seem prudent for both levels of government to carefully consider public confidence when considering any future federal legislation for public education. A study of federal and intergovernmental issues found that Americans have the most confidence in local government, followed by confidence in federal, and then in state governments. Americans displayed reduced trust

and confidence in the federal government, and trust in all three spheres of government—federal, state, and local—diminished between 2004 and 2006, perhaps reflecting the poor response of all three areas of government to Hurricane Katrina’s challenges. Since 1972, the public's support for the federal government has been in decline with a corresponding increase in support of state governments, especially local governments (Cole & Kincaid, 2006, p. 443).

A study initially commissioned by the U.S. Advisory Commission on Intergovernmental Relations (ACIR), was continued by Cole and Kincaid beginning again in 1999, has reported the results of public attitudes toward federal, state, and local trust and confidence in the governments of the American federal system. Prior to its termination, the U.S. Advisory Commission on Intergovernmental Relations (ACIR) reported annually on public opinions about a number of intergovernmental issues including the trust and confidence in the federal, state, and local governments, and intergovernmental distributions of power. Cole and Kincaid have carried on this endeavor by replicating ACIR questions and reporting annually about national surveys. These studies offer “theoretical significance about the impact of major social, political, and economic events on the public's attitudes toward various federalism issues” (2006, p. 443).

From this theoretical perspective, scholars have argued that federalism is defined by more than just certain constitutional arrangements by which government powers are distributed. William Livingston argued that the very essence of federalism, “lies not in the institutional or constitutional structure but in [the attitudes of] society itself” (Cole & Kincaid, 2006, p. 444).

Daniel J. Elazar argued that federalism is really "a way of thinking" (Cole & Kincaid, 2006, p. 444). Public attitudes, beliefs, and opinions that are “conducive to the creation, support, and maintenance of a federal polity,” help to shape federalism.

Surveys by Cole and Kincaid, and of the ACIR, assist in tapping federalist attitudes and opinions and help to give at least one look at how these attitudes apply to America's federal system. Some of the questions in their survey included:

- From which level of government do you feel you get the most for your money?
- Overall, how much trust and confidence do you have in the federal government to do a good job in carrying out its responsibilities?
- Overall, how much trust and confidence do you have in your state government to do a good job in carrying out its responsibilities?
- Overall, how much trust and confidence do you have in your local government to do a good job in carrying out its responsibilities?

(Cole & Kincaid, 2006, p. 444)

In these studies, the surveys conducted up until the late 1990s showed a decline in public support for the federal government with a corresponding increase in support for state and local governments. Throughout the 1990s, local governments were given the most public support, and support of the federal government “declined to the lowest levels recorded during the thirty-four survey years” (2006, p.444) with one exception. The trend was broken in 2002, with a change to a more favorable attitude toward the federal government and a decline in support for state and local governments. Cole and Kincaid

asserted that the change was probably most likely attributed to the public response to the terrorist attacks of September 11, 2001.

Other studies supported this change indicating a significant upturn in public support for the federal government following the terrorist attacks (Stille, 2001; Mackenzie and Labiner, 2002; Kincaid et al., 2003). This heightened public support for the federal government continued through 2004. With that said, even the high ratings supporting the federal government in 2002 and 2004 after the terrorist attacks, were still lower than the public support shown during the 1970s —“the decade of Watergate, Arab oil-embargo crisis, stagflation, and President Jimmy Carter's famous "malaise" diagnosis of the country” (Cole & Kincaid, 2006, p.445).

Cole and Kincaid's (2006) survey suggested that the public's support of the various governments could be returning to the previous "normal" historical (1979-1999) levels. Results indicated that support for the federal government declined and the largest proportion of public support was given to their local governments, suggesting that the public's post-2001 support of the federal government reached its peak in 2004 (Cole & Kincaid).

The public's confidence in the local government was not reflected by their confidence in their state government. Cole and Kincaid suggested that “the generally low levels of support for the states over the years are consistent with the tax-and-expenditure revolts and term-limits movements that have plagued states in recent decades” (2006, p. 446). Their findings are consistent with research by Hetherington and Nugent indicating that “public support for state governments has very little to do with the capacity and responsiveness of state governments and much more to do with other factors, especially

distrust of the federal government, ideology, and partisanship (Cole & Kincaid, 2006, p.445).

In analyzing responses to “the most-for-your-money question,” Cole and Kincaid also compared the proportion of the public who favored the federal government compared to the proportion of the public who favored state and local governments combined. Their conclusions indicated a long-term decline in support for the federal government and a corresponding increase in support for state and local governments combined (Cole & Kincaid).

At the start of the trend analysis in 1972, support for the federal government and for state and local governments was negligible. Yet, since that time support for the federal government has declined dramatically, while support for the state and local governments combined has been consistently high. Some major historical events appear to have impacted this trend including Watergate, and the oil crisis of the 1970’s. A major conclusion from these studies indicated that “there has been a general decline in the public's support for the federal government compared with its increased support for state and local governments, especially local governments, over a period that extends now for three decades” (Cole & Kincaid, 2006, p. 457).

Although, the public's trust in the federal government declined considerably from 1987 to 1999, it showed a marked increase following the terrorist attacks of 2001. Since then, the 2006 surveys indicated that the level of trust for the federal government is again on the decline. In comparison, the level of trust in state and local governments has not changed much from the period from 1987-2006. Over that period of time, “trust and confidence in state and local governments have remained fairly consistent while trust for

the federal government has been lower and slightly more volatile” (Cole & Kincaid, 2006, p. 454).

Conclusions of Cole and Kincaid indicated long-term trends in public attitudes toward various issues in federalism and intergovernmental relations, and revealed some perhaps short-term, deviations from those trends. Probably the most significant long-term trend was the decline in the public's support of the federal government and the corresponding increase in support of state and especially local governments. Although, the surveys show that a reversal of this trend followed the terrorist attacks of 2001, the 2006 results suggested that this reversal was temporary.

Also, their survey revealed some deviations from long-term trends. Cole and Kincaid reported that, “Although the 2006 survey showed a return to declining levels of support for the federal government, it also disclosed a decline in support for all governments—federal, state, and local” (2006, p.457). A decline in support of the federal government usually indicates a corresponding increase in support for state and local governments; however, trust in all three spheres of government declined. They suggested that “whether these deviations represent long-term attitude shifts or temporary departures from "normal" patterns of response remains to be seen” (2006, p. 457). Certainly, something that state legislators should consider is to ensure the public trust and confidence in supporting the efforts for any future challenges made by the states.

Summary Remarks

There are a number of factors that are taken into account when challenging NCLB legislation by the states. One factor that seems to be an interwoven issue of resistance by the states is the expanded role of the federal government in public education. Even

though some might accept the federal government assisting the states with public education, there is a public concern about the ineffectiveness and inefficiency of the federal government in managing NCLB. Others see NCLB as an unfunded mandate because of its unrealistic expectations for states, and because of its unfulfilled promises to fund the states and local school districts. There seems to be a number of obligations placed on the states by NCLB, yet the money is not enough to implement those requirements. This appears to be a fundamental objection to the national government's desire to trespass on its states' sovereignty in education matters, and there is a consensus that the national government has crossed the line usurping responsibilities reserved for the states.

Some people argued that the additional involvement by the national government in public education permits the national government to force the hand of the states to comply with its demands by using resources and incentives as leverage, challenging the concept of the constitutional reserved rights of the states. The enticement of federal money was supposed to provide adequate funding, producing the desired outcomes that no child would be left behind. With the discrepancies in academic and accountability standards that exist from state to state, and with those standards varying so widely from one state to the next, this discrepancy has also created what some describe as an "accountability illusion." This statement made by Vinovskis echoes this thinking, "When existing federal educational programs, well-intentioned though they may be, are not as effective as they could or should be, the problem is not just wasted tax dollars, but wasted chances to help those most in need" (Vinovskis, 1999, p.201). Earning the public's trust and confidence in policy decision-making in public education is a consideration that all

levels of government should not take for granted. These issues will be looked at in more detail in the next chapter examining this ongoing power struggle between the various levels of government.

Chapter Four

State Comparisons – Interviews with Legislators

It seemed obvious to some legislators, educators, and parents that No Child Left Behind (NCLB) needed some serious repair. The question became who was going to fix it, and who would challenge the federal government to make the necessary changes to rejuvenate public education? This inquiry focuses on the states' legislative responses and the rebutting of NCLB during its legislative sessions. With states being impacted by the economy, and each one having financial problems providing adequate funding to public education, it was revealing to investigate the reactions of state legislators to NCLB. Many states were in a conundrum. If a state continued to accept federal monies then it had to comply with the federal mandates of NCLB. Yet promised or even adequate funding had not always been provided to the states to support those mandates. The reactions of state legislators provided a means to examine the impact of NCLB on those respective states, and helped to assess the federal government's response in meeting those challenges from the states.

Whether or not the states could solve the problems with the federal government's NCLB legislation, it certainly was the states' responsibility to challenge pieces of this legislation that impeded progress being made improving public education. With the demands of the fiscal monetary restraints the states were already facing, it seemed that implementing the NCLB legislation without the appropriate and promised funding made this very challenging. The question of who was going to address this problem, or at least who would challenge the federal government to make changes to NCLB, faced the individual states. In examining the three chosen states in this study and those states'

legislative responses to NCLB, it was possible to see some similar themes and also to see some perspectives that were unique to each state.

Each of these states was in a position that would require it to continue to accept federal monies and required it to comply with the federal mandates of NCLB and future legislation. However, if adequate funding was not being provided to assist in implementing NCLB, then the states could challenge those mandates more vehemently. States could also try to find what they deemed as necessary loopholes in NCLB to circumvent some of the demands of this legislation. By choosing three states in the central part of the United States, there were some obvious geographical and cultural limitations. Because public education is the responsibility of the states, there also will be limitations, in this inquiry, due to differences in state testing methods, in the absence of a national standardized test. In the end, whether or not the states' testing mechanisms are truly meeting the academic requirements of NCLB is not the focus of this study, but recognizing that there are differences in state testing mechanisms might be helpful in understanding the reaction of these states to federal legislation.

With a majority of the states challenging some aspect of NCLB, an examination of the unique reaction particular states have taken in addressing those challenges will be considered. The three states of Kansas, Missouri, and Colorado have been chosen for this study, focusing on the reactions of state legislators to NCLB. This investigation is drawn from information gathered from the interviews conducted with state legislators who have shown an interest in education or who have served as education committee members in their legislature.

Interviews with Key State Legislators

This qualitative research study used an historical research approach through a structured interview, allowing legislators to reflect and provide possible insight in regard to issues and problems related to No Child Left Behind. The discussion began with an examination of lawmaker views. State legislators from Kansas, Colorado, and Missouri were contacted through email and telephone conversations in the months of March and April, during their 2010 Spring Legislative Sessions. Two legislators from each state accepted the invitation to be interviewed for the purposes of this study. Their roles made them key to the inquiry process. Legislative peers in Kansas and Missouri made recommendations about other legislators, from their respective states, who they considered knowledgeable and informed regarding education matters related to NCLB, and who they thought would participate in this inquiry. The two Colorado legislators were selected from the Colorado State Legislative website and both of them accepted the invitation to be interviewed. Legislators were purposefully selected for this study who had served on their state's education committee or who had played an instrumental role in education matters in their legislature.

The role of the researcher was to ask the interview questions in the same manner with all interviewees with some leeway given when appropriate, and the interviewer remained 'neutral' when practical. Each legislator signed the required consent forms necessary to conduct the interview process. In advance, each state legislator was sent the questions to be asked during the interview process. The use of audiotape insured the accuracy of their responses in the interview process. All audiotapes were safely secured following the interviews.

Interview Subjects of this Study

The subjects of this study included state legislators consisting of current members of the Senate and the House of Representatives. Five Senators and one member of the House of Representatives were interviewed for this study, including four males and two females. Both political parties were represented as well, comprising of four Democrats and two Republicans. Two of the legislators interviewed have served in leadership roles in their chamber, three have served in leadership roles on their state's education committee, and five out of the six have served in some capacity on their state's education committee. The lone legislator who was not on the education committee in her state was instrumental in proposing a measure for educational reform in her state.

Personal backgrounds offered some similarities, yet were varied as well. For example, their tenures in office in the state legislatures spanned from one year of service to seventeen years of service. Consequently, the average tenure of office of legislators interviewed was eight years, which coincides with the date of the introduction and passage of NCLB in January of 2002.

All legislators offered a variety of reasons for their interest and support of public education. Two of the six were former teachers, one was a former principal, one served in the Teach for America Program, and as an education advisor for two years for Barack Obama's presidential campaign and administration. In addition, three of the six legislators had experience serving on a local school board, and two had experience working with their State Board of Education.

Question Topics

During the interview process, prior to answering the questions for the purpose of this study, State Legislators offered a brief background of their involvement in their state legislatures and their interest in public education. Following their brief introduction, legislators answered questions that dealt with following:

1. The role of government in public education
2. The impact of NCLB in their respective state
3. The impact of economic conditions in fulfilling NCLB requirements
4. State roles: diminished or enhanced by NCLB?
5. The impact of the Stimulus Bill in their efforts to fulfill NCLB
6. The Race to the Top policy offered by the U.S. Department of Education
7. The impact of the current economic conditions to adequately fund public education
8. Additional comments, concluding thoughts, concerns, or insight.

In addressing each of the previously mentioned topics, a number of questions were asked related to each topic. For the purpose of this chapter, each topic will be addressed by examining the answers of the state legislators to specific questions that generated from the previously mentioned topics. There will be some overlap of related topics, but the attempt will be to discuss trends, themes, patterns, and unique answers related to those individual topics, one at a time. Some of the themes, trends, and patterns include: the increased and expansive role of the federal government; NCLB as an unfunded mandate (“Show Me the Money”); federal monetary enticements; unconstitutional issues; making education policy operational; public reactions to NCLB;

common factors of resistance (e.g., AYP, HQT, subgroups, proficiencies); and student preparation for the future. The names of the six legislators will not be disclosed. Each legislator has been assigned the first letter that corresponds to their state followed by a number in order to distinguish individual responses. For each of the topics discussed, Kansas Legislators are first to respond (labeled Legislator K1 and Legislator K2); followed by Missouri Legislators (labeled Legislator M1 and Legislator M2); concluding with Colorado Legislators (labeled Legislator C1 and Legislator C2).

The Role of the National Government in Public Education (Topic #1)

The first topic addressed by the state legislators was to discuss the role of the federal government in public education. Subjects were asked to discuss the roles the national government, the state legislature, and the State Board of Education have in making policy decisions in public education. The following questions were asked about the role of the national government in public education: “What role does the national government have in making policy decisions in public education? What role should it have?”

It is probably no surprise how most of the state legislators interviewed responded to the question of the role the national government should have in making policy decisions in public education. A general theme for all legislators interviewed was that the national government has overstepped its bounds by forcing states to comply with the unfunded mandates of NCLB.

Most of the legislators’ interviewed argued that the role of the national government is a constitutional issue, and that the national government should not have a say in public education policy based on constitutional grounds. Legislator K1 argued that

making public education policy is not a power of the national government, and summarizing the Tenth Amendment to the US Constitution, stated that the powers not granted to the national government by the Constitution are powers reserved for the states or the people of the states, respectively. He went on to say that the role of the national government has become immense, and it drives NCLB and the common core standards that will lead to a national curriculum.

Legislator K2 stated that, “The federal government has for the last 20 years played an increasing role in policy decisions, even though over that period of time it has contributed to only about 7% of the cost of public education.” He suggested that this increase in the federal government’s role in public education will continue, and he asserted that the US Congress seemed to want to play a more expansive role in public education. He suggested that the federal government should have as little to do with policy making aspects in public education as possible. He went on to say, “I think that it (K-12 public education) is a role reserved for the states under our constitutional form of government, and I am alarmed by the increasing influence of the federal government. From what I see, the role that it (the federal government) played in public education has not been a positive or more productive one.”

Legislator M1 offered that in her state there is “a lot of libertarian kind of thinking people on both sides of the aisle,” and a lot of people saw No Child Left Behind as an unfunded mandate which the federal government did not follow through on with sufficient resources to support state compliance in fulfilling NCLB mandates.”

Even though Legislator M2 suggested that the federal government looks at education from an “unholistic, unhealthy perspective,” she suggested that there may be

some hope for the future with the Race to the Top program and perhaps there could be a transformation in public education policy from the national government away from mandated requirements of NCLB, allowing states the benefit of designing programs that make sense to each individual state.

Legislator C1, speaking on behalf of the peers of his state said, “Well, I think that all of us would say that the national government is increasingly participating in decisions to make policy in public education throughout the nation...(and) there are many of us who are concerned.” He added that beginning with the Americans with Disabilities Act, the national government took on an ever-increasing role in public education, and the federal government has greatly altered the way in which decisions are made and resources are allocated. He suggested that the nation has moved from being erroneously labeled a “nation at risk” during the Reagan Administration to the NCLB era, the national government has increasingly created greater demands on public education. He stated that, the demands are placated “sometimes, with money to tantalize and to encourage compliance, but often times, never enough money, almost always never enough money needed in order to comply with what is really demanded by the national government.”

The Role of the State Legislature in Public Education

The second question related to this topic asked legislators to discuss what role state legislators should have, and do have, in making policy decisions for public education in their respective state. State legislators were consistent in their responses in comparing the state legislature’s role in making policy decisions for public education. Some general themes included constitutional duties of the state, government boundary limitations, and locus of control. The following questions were asked of each legislator:

“What role does the state legislature have in making policy decisions in public education? What role should it have?”

Legislator K1 stated there are state requirements in the Kansas State Constitution in Article 6, Section 1 and Section 6, explaining the responsibility of the state government in providing for the intellectual, vocational, and scientific interests of the students in the state. There is also a constitutional duty of the state legislature to provide a suitable education for its students in the state. He argued that the state’s accreditation process overstepped its bounds by taking away local control and giving complete control of almost all aspects of public education to the state. It is a responsibility of the state to fund the instructional interests of the intellectual, vocational, and scientific needs of its schools by providing the instructional costs, but he clarified there are aspects of public education that should be funded by the local government. He is a big proponent of “the closer the government is to the people, the better off the people will be.” Therefore, he supported the idea that the role that public education has should be in the hands of the local school districts and that education should be delivered locally, not by the state or the national government.

Legislator K2 stated he thinks the state legislature should have, and does have, quite a much larger role in making public policy decisions in public education. He argued, “The dilemma that the state government faces is getting too far into the details of public education. Micro-managing issues stem from the national level, and then these issues are implemented by the states in micromanaging the local school districts, and consequently transferring the power from where it is supposed to lie!” He stated, “I think that is a role that should be left to the local elected boards of education under the state

Constitution. The state government plays a major role in providing financing for public education and to give some broad general policy guidance, but not in the making of public education policy.”

Legislator M1 noted that her state has a constitutional requirement to maintain a balanced budget. She stated that it is a constitutional priority and duty to address education; it is “the first item we make sure that we adequately fund.” Legislator M2 stated that the state is closer to the actual school districts than the federal government’s. She suggested that the State Board can take recommendations from the federal government, but it is the state that should implement those recommendations with more detailed and specific state objectives.

Legislator C1’s state is constitutionally required to assure “a thorough and uniform education.” Over the years, there were equalization and property assessment violations that were a problem in adequately funding public education. During the past 10 years, a problem also existed with educational standards continually being rewritten and then adopted based on national and sometimes international standards. Then, it became necessary for the state to implement those changes in order to meet requirements and impose them on its districts in order to achieve accreditation. He stated, “And so, it has been a theme of addressing constitutional issues in our state as a series of irritations stemming from the national government.” He continued that even though “the state determines certain standards in the curriculum in order to achieve those national standards, and even though the state constitution guarantees control of public education to local school districts, I suppose it’s done with a wink and a smile.” He suggested that the reality of public education being locally-controlled has shifted the balance of power

to being state-controlled by means of NCLB. Even though the state constitution guarantees local control of education, the state has increased its power, placing additional costly obligations on local school districts.

Legislator C2 suggested that with 93% of the dollars coming from the state, he would suggest the state should make key decisions to help ensure equal access and implementation in offering equitable opportunities for students across the state. Equal opportunity would include things like access to programs, access to quality schools, and access to high quality standards. The state should also ensure the local school districts are implementing quality public education policies.

The Role of the State Board of Education in Public Education

The third question related to the topic of the role of the federal government in public education and asked legislators to discuss the role the State Board of Education should have, and does have, in policy decisions in public education in their respective states. Some general themes included the power to make policy operational, setting curriculum standards, and operating as the middle man. State legislators (including some who were former State Board members) responded to the following questions, “What role does the State Board of Education have in making policy decisions in public education? What role should it have?”

Legislator K1 stated that, “They (State Board members) are constitutionally empowered to license teachers and teacher accreditation programs and sometimes they are called the fourth branch of government.” The State Board has self-executing powers in making decisions on certain issues independent of the legislature and governor. He asserted that, “they have the ability to make sure that teacher programs ‘meet muster’ and

satisfy the requirements of the state.” They have the power to set state curriculum standards; however they do not set the scope and sequence of those state standards, which is up to the local school districts to make that determination. Legislator K2 agreed and emphasized that the State Board of Education also has to be careful not to micro-manage the local school districts.

Legislator M1 perceived that the State Board would cooperate with the Director of Elementary and Secondary Education to oversee and make recommendations to support the forward movement of education policies for all schools within the state. Legislator M2 added that the state Board of Education plays an extremely pivotal role in the implementation of policies which determine recommendations that are applicable to the state and applicable to the local school boards in their delivery of said policy. The State Board is close enough to the local school boards to have a more immediate influence in making important policy decisions.

Legislator C1 said that he thinks it is really the state legislature that directs the State Board to implement state statutes dealing with schools. He maintained that it is the legislature that gives the power to the Board of Education to direct education, adding that even the Constitution says the Board generally supervises the schools, “whatever that means, we don't know what the Constitution makers meant, but we have passed legislation from time to time that directs the State Board of Education to do X, Y, and Z; so that’s how they operate.” He went on to assert that, “Of course, now with federal regulations, the State Board of Education receives the funds, so they become the middleman for the federal government...with the enticement of funds to do certain things.”

Legislator C2 also suggested that the purpose of the State Board is to set guidelines and goals for The Department of Education, and to take guidance from the state legislature. He supported the idea that the right structure is in place as a way to make public education policy operational. Yet, he suggested that within those policy decisions there is some significant leeway that has a substantive impact which is all under the control of the state legislature. He argued that he thinks that the regulatory regime, in light of rule-making and design implementation of the educational policies, is the right direction for those intended policies.

NCLB Impact on the States (Topic #2)

The second set of questions addressed by state legislators was to discuss the impact of NCLB on their individual states. These questions addressed the crux of the matter of state challenges to NCLB. Several trends surrounded numerous challenges by the state, including negative public reaction, NCLB as an unfunded mandate, unnecessary testing, maintaining highly qualified teachers, and minority subgroup proficiency issues related to AYP. The following questions were asked about this impact: How has NCLB impacted your state? Has your state challenged NCLB legislation? In what way has it impacted your state financially, regarding school improvement and in leaving no child behind?

Legislator K1 discussed whether or not the word “challenge” was the right word to describe what his state had done in reaction to NCLB legislation. “I don’t know that challenge is the correct word to describe what our state has done. The legislature has taken some action that they deemed necessary to say, ‘We don’t like NCLB.’” As far as what the State Board of Education has done, this state challenged NCLB by requesting

waivers to accomplish working through the issues, rather than by means of an actual legislative challenge to NCLB. Whether or not the state officially challenged NCLB, he argued that NCLB was the wrong thing done by the federal government, and not merely on unconstitutional grounds. He stated that even though the state accreditation process that started in 1992 initially faced some challenges, by 2001 the state school improvement process was benefiting students, so it was unnecessary for the state to adopt NCLB. He suggested that the state had been well on its way with state assessments and with the identification of the needs of the individual students and subgroups. The accreditation process in the state was already moving in the direction it needed to be. In light of the prospect of federal funding of NCLB he stated, “the federal government never gives money that it says it is going to give; it does not matter what program you are talking about.”

Legislator K2 suggested that NCLB had a major impact both positively and negatively. On one hand, “It had a positive impact in focusing the attention of the public on public school districts and the achievement gap that existed.” Unfortunately, on the other hand, the focus has been solely on measuring achievement based on assessment tests. Student achievement, in his opinion, was not necessarily reflected accurately in student assessment tests, and he thinks there are other alternatives and better ways to measure student achievement. He added that much of NCLB has had a negative impact in other areas, because it forced school districts to focus more of the resources and attention on math, reading, and writing. He stated, “Not that we should not devote a little time for those subjects, but we have devoted time to those subjects to the exclusion of other subjects that I think are also very important. And I am talking about science, history,

music, theater, art, and foreign-language.” His position was that NCLB has damaged real school achievement by minimizing other areas of study.

As far as the state legislature challenging NCLB, his state legislature discussed the possibility of challenging it by refusing to buy into NCLB requirements, but once the legislature was informed of the financial costs of losing somewhere between 175 million to 200 million dollars in federal aid, the discussion largely died away. He also stated that another way that NCLB impacted the state financially, was with the constant threat of the penalties that could be imposed on school districts failing to achieve AYP, and consequently, not receiving federal money to support public education.

He reiterated that NCLB has done nothing to contribute to school improvement, and pertaining to leaving no child behind he was adamant that NCLB was just a political slogan to achieve its intended purpose, which was to gain public attention. He went on to say, “those of us who are involved in public education all aspire to the goal of every child receiving a quality education, but those of us who are realists understand it is unlikely to be true for every student.” He suggested that there are too many other factors that affect a child's education and achievement that are far beyond the control of teachers in public schools. He summarized, “So the goal of NCLB to have 100% proficiency by 2014 is laughable. It was a goal of people who don't know anything about public education; those are the same people who passed the law in the first place.”

Legislator M1 stated that certainly there have been public complaints about NCLB from people writing to their respective school districts, and not just from the urban areas, but from the suburban districts as well. Much of the public has felt the impact NCLB has had on its schools is a lot of “teaching to the test,” and as a result it has hurt

the quality of education for students. Schools are set up for failure by not having enough students who meet adequate yearly progress. Unfortunately, there are not enough resources to achieve the desired ends, resulting in a lot of public dissatisfaction with NCLB.

She continued that there were a large number of complaints from citizens from rural areas and from urban areas about the ineffectiveness of NCLB, which led to state representatives drafting a House Concurrent Resolution to single out what was wrong with NCLB. The House Concurrent Resolution that was filed in 2007 was one way the state tried to challenge NCLB. Legislator M2 expressed, “We wanted the message communicated to the congressional delegation in Washington, D.C. that we will not re-authorize NCLB until necessary changes were made. However, those of us who drafted the bill were of the minority party, and therefore we did not manage to get a public hearing of it, even with public and teacher support.”

When reflecting on the financial difficulties the state has had in striving to meet standards without adequate resources, Legislator M2 offered that, “I don’t know if it has to do with NCLB or how much it has to do with the outdated, inadequate, and unfair state tax system that exists and coincides with inadequate resources to fund education.” She asserted that NCLB has made schools worse, increased the dropout rate in the urban areas, and “has not done anything in regard to leaving no child behind; a lot of children are left behind.”

Legislator M1 agreed that her state implemented NCLB as best they could within the law, but few if any funds accompanied it, making it an unfunded mandate. She stated that “the goal, while admirable, was unrealistic. Having all students progress at the same

level is a good goal, but some students are at a different place than others, and NCLB is virtually impossible to live with.”

Legislator C1 stated that in his state there have only been occasional legislative forays into challenging NCLB. It was his belief that NCLB has caused the states to do more things to intervene with school districts by judging schools on issues related to noncompliance, issues maintaining highly qualified teachers, and issues about attaining proficiency standards by 2014, rather than judging schools for the ability to attain real school effectiveness. In his state, the various subgroups, including ethnic minorities and special education, present an ongoing problem in making AYP, and the state continues to lose ground if school districts are not able to make adequate progress toward “universal proficiency” by 2014. He maintained, “The real challenge we are faced with is the federal government demanding more tests than it really requires.”

He did offer that it certainly has raised the issue of what the very name No Child Left Behind implies, which is that the state has a responsibility and an obligation not to leave any child behind. However, he explained that some of these students are never going to be proficient. “Of course, it depends on what you mean by proficient. NCLB does not recognize the vast differences in students, and it also does not recognize that with certain benchmarks there is a variation of maturation level in youngsters who may or may not be able to achieve a certain kind of proficiency by a given age.” He remarked that it seems to bear out, as time goes by, that the deficiencies will continue, and the resources are not there to equip schools to meet the demands that have been placed upon them.

In contrast, Legislator C2 suggested the biggest impact NCLB has had on the states is a demand for accountability, in the structure (especially on testing) of accountability in demonstration of adequate yearly progress, and in teacher certifications and teacher licensure. For his state, NCLB provided a real urgency for making sure that students were improving in their achievement across the state so there would not be pockets of success and pockets of weakness.

As far as school improvement in his state, NCLB provided urgency for some school closures, with schools that did not make adequate yearly progress for three years in a row. NCLB accelerated the ongoing argument that some schools are not serving children well enough and should not be open. He asserted that it was a landmark change in what they had been previously doing with low-performing schools which was with the accepted understanding to simply “hope for the best.” He added, “I think this has changed the way we think about what is possible, and what is publicly acceptable in K-12 schools that are chronically low-performing.”

He concluded, “I think NCLB has set a strong and a high bar for what we should expect of our students and of ourselves. It may be that we set a bar that we are unable to reach, but in doing that, it has made us face the places where we are failing and has made us have a much harder conversation of what do to improve it.” He stated that the idea that all students should achieve at high levels regardless of their race or income is exactly the right commitment, but he did concede that the most unfortunate problem is that the federal government did not adequately fund NCLB so the states could implement change successfully.

Economic Conditions Impacting NCLB (Topic 3)

The third topic the state legislators addressed dealt with the current economic conditions and implications of those conditions impacting the state in fulfilling NCLB requirements for maintaining highly qualified teachers, for meeting the budgetary obligations of the state, for fulfilling the budgetary promises to the local school districts, and for managing the testing and assessment requirements of the state. Several themes emerged from this topic including the recession timetable projections coinciding with the 2014 proficiency goals of NCLB, the detrimental financial costs to the state in providing quality education, the accelerated problems of maintaining highly qualified teachers (HQT), and broken promises in providing financially assistance to public education.

Legislator K1 stated that it is a bigger challenge to fund public education during any kind of recession, but he suggested this is perhaps the most brutal recession we have seen. He stated that the recession is supposed to last longer than 2014, and it is going to be a challenge to maintain the qualified teachers that NCLB has defined.

“Unfortunately,” he said, “the economic conditions will impact schools just as it impacts businesses in laying off people; schools may have to lay some employees off, and that will be a bad situation, because nobody wants to take a pay cut and nobody wants to be laid off.” At the state level, he contends that economic conditions have not influenced the state, because the state assessment tests will continue, but at the local level it is a bigger challenge because it will be difficult to work with the budget cutbacks.

Legislator K2 agreed that the economic conditions have impacted the states in public education. With the depletion of K-12 funding, it is even more difficult for school districts to meet requirements of NCLB. He contended that his state has a very good

public education system, and students were consistently in the top ten percent of all the states in all areas, so he does not think his state will experience the same types of problems to the same magnitude some of the more urban areas like Los Angeles, Chicago, New York, Newark, and Miami may experience. He remarked that the current economic conditions have hindered the state's ability to fulfill its budgetary obligations. Because of this, the state legislature made a commitment to adequately fund public education, but ended up dramatically reducing K-12 public education funding. He said, "We were on the path to fulfilling that promise when the economic recession hit us." As a result he explained they have not met the budgetary promises made to the state's school districts. As far as managing the testing and assessment requirements of the state, tests are developed by and paid for through appropriations of funds by the State of Board of Education, and they are faced with having less money to meet the demands.

Legislator M1 remarked, "I think that a lot of very bright people who came into urban education programs with good reasons, i.e., to change the world...burnt out within a year or two of trying to work in our schools, and NCLB had everything to do with that." She continued that rather than teachers being allowed to bring their own creativity and their love of learning into the classroom, too often expectations were to "bring more of a boot camp mentality (as a teacher) to the classroom by acting off of a script, using a stopwatch, and operating in a regimented fashion." With the administration focused on test scores, and teachers not being able to do the things they had wanted to accomplish, this frustrating situation resulted in very capable teachers feeling burnt out. "So," she said, "I think it has been harder for us to attract and keep highly qualified teachers. Even the Teach for America folks that leave the area are not in a hurry to get back into public

education.” She added that they go somewhere else to teach, “And some folks go to charter schools out of the frustration with the public school system, I think largely because of the implementation of a regimented NCLB. St. Louis, for some time has had a difficult time with public schools in attracting and retaining enough qualified teachers, and there is a big reliance on substitute teachers, some of whom would not be called highly qualified.” She continued that between the high volume of transient students in the classroom, and the amount of teachers moving in and out of the area, schools are put in such a state of a lack of confidence it really hurts the chances for children to succeed. She contends that developing a trusted adult relationship means everything to a child who needs to have a fair chance overcoming their life circumstances. “It is not fair (to the students) and that is appalling to me, and as an end result, highly qualified teachers are difficult to retain.”

In addition, Legislator M2 contended that, “We have some of the most highly qualified teachers anywhere and they work extremely hard trying to comply with initiatives from the state and federal government.” However, maintaining that level of quality can be expensive to its foundation. Of course, school districts want more money, but she stated, “We contribute as equitably as we can, but testing is a challenge, I believe, because of NCLB; we concentrate more on testing then we should.”

Legislator M1 also stated that Missouri's budgetary system is so bad that it, alone, has caused more trouble than NCLB, and it unfortunately places another bureaucratic layer on top of the financial problems of the state. An existing and continuing problem is that, “We cannot raise funding over the revenue caps without taking it to a vote of the people...without having a state-wide vote.” She illustrates her point with an example:

“Our tobacco taxes are at \$.17 a pack. The national average is something like \$1.50 a pack.” Considering that “we are next to the bottom in the nation....it makes no sense that cigarette taxes are as low as they are. Twice this year a tax increase has been voted down (both times 51% to 49%). She also expressed that the state has an income tax system that has not changed since 1931, and this very outdated tax table promulgates an unfair system. She explained that the state has not been doing anything to increase revenue to even keep up with inflation and the needs of a growing state. She said, “We pay our teachers 44th in the nation, and it is inadequate how we fund public education. Some 300 school districts brought a lawsuit against the state; however, they lost in that effort.”

Legislator M1 went on to state that student assessments have continued, because assessments are mandated. She remarked that funding is so limited in both urban and rural school districts that the problem in public education goes well beyond the classroom. “We are not doing enough with providing social services to those families in order to deal with what might be actually causing the low test scores.” She stated that test results are an inaccurate assessment about each student, because “sometimes it is something even as simple and foundational as they cannot sleep in their own home because it's too cold, or because there is no power on at their house.” She argued that it is no wonder that when they go to school, they are exhausted, because they have been too cold to sleep, and once they are in a warm place and can get some food at the school....with a breakfast and school lunch, all they want to do is sleep. She concluded, “Schools have enough of a challenge, but the schools have been prepared to meet those needs by themselves, without the help from other systems.”

Legislator C1 responded that the economic conditions did not just impact NCLB, but impacted the thirteen new standards the state had implemented and the costs associated with state assessments. He stated searching for funds is unnerving, because the cost would be astronomical. He contended even though the state, over time, has done more testing than the bare minimum required by NCLB, it (with certain populations) has caused the state to spend funds on education that were allocated for other state programs. Also, maintaining highly qualified teachers in areas of the state that are extremely sparse in population has made it extremely difficult to find a HQT (e.g., searching for a HQT to teach a singleton physics class). Many times, there is not a sufficient population of students to support or sustain the teacher who is highly qualified to teach in a certain area. He stated, “At the meetings of the National Council of State Legislatures, many western states force this issue time, and time, and time again, indicating that they cannot maintain HQT,” merely because they cannot afford a highly qualified teacher for every subject in the curriculum. As far as appropriate funding, he stated that, for the second year in a row, the legislature in his state was dealing with school finance shortfalls, and this would reduce the appropriation totals from the state general fund with a 6.35% reduction for every school district.

Legislator C2 agreed, particularly with testing, the state legislature is finding more and more push-back from legislators and certainly from some public schools. The testing infrastructure is expensive, because K-12 education has become more and more concerned about spending money on accountability measures. He also agreed there will always be a struggle to get highly qualified teachers in a lot of regions in the state, so that

struggle will continue to make it difficult for his state to meet NCLB requirements in maintaining highly qualified teachers.

Legislator C2 added that the idea that any dollar the state spends on education is a dollar that could be spent someplace else is an idea that has influenced the sentiment of the public. He suggested the investment in education is worth making. He did not imply funding education was an unwise investment of resources, but he thought it certainly had made a difference with the allocation of funds for alternative programs in the state. Economic conditions had been detrimental in his state with about \$400 million cut out of a \$4 billion budget. The economic conditions had made a difference in fulfilling NCLB, resulting in a price tag of about \$25 million a year for its implementation.

Public Education: Enhanced or Diminished? (Topic #4)

The fourth topic addressed questions about whether or not the state's role in public education has been enhanced or diminished as a result of NCLB legislation. The answers given by the state legislators differed depending on their political service perspective when making the comparison. For example, when a legislator compared local control to state control, then he or she typically stated that the state role was enhanced by NCLB legislation. However, if a legislator compared state control to national government control, then he or she typically stated that the state role was diminished. Several trends, including some previously mentioned ones included a concern about negative public reaction, a concern for nationalizing public education, and a concern for more and more control of the national government over the states in public education. The following questions were asked of each state legislator: Has the role of the states in public education been diminished or enhanced by NCLB? Has there been a paradigm shift in

regard to who has the power in public education? What do you see on the horizon for state and federal relations in public education?

Legislator K1 stated that the role of the state has been usurped by the federal government, but whether or not there has been a paradigm shift in the relationship between the states and the national government is still unclear. He stated that there are a number of constituents in the states that believe that the Constitution, as citizens currently know it, is slipping away, and this power struggle between the federal government and the state could lead to a very fractious moment. On the other hand, he stated that some state legislators think everything is fine and have the attitude toward the national government of, “Just give us the money. At this point time I do not know which direction it is going to go.”

Legislator K2 agreed that he did not think the role of the state has gone far enough to indicate a paradigm shift because he did not think that the federal government has influenced the public that much, yet. He asserted, “I think many states are starting to realize this (influence), and states are beginning to resist” because of this potential political influence on the people. He remarked somewhat critically, “Now, I find that being a legislator myself, I can say this is true both of federal legislators in Washington D.C. and state legislators in capitals across the country. They get elected and somehow, by virtue of a majority of the votes (in getting elected to office), they become experts concerning all the bills that they deal with, or at least they think they are experts, but legislative bills in many cases far exceed their level of knowledge.” He stated that on the horizon he foresees state and federal relations as “a growing acrimony, a tug of war, between federal and state governments in public education.”

Legislator M1 agreed with the notion that NCLB has diminished the role of the states in public education. She stated that she has heard from the people in her state, and they preferred a state emphasis with the influence on public education rather than an emphasis on the federal government with the influence coming from NCLB legislation. When she looked at the national viewpoint of K-12 public education, she considered the current Race to the Top program as obnoxious and worrisome. However, at the state level she was quite impressed by the new head of the State Department of Elementary and Secondary Education within her state, because this person seemed to be a strong advocate for real change. Her hope is that the control of public education can be returned to the states. Legislator M2 agreed that her state is very sensitive about the results of all of the testing required by NCLB; the shift has been on an emphasis for children to pass the test, rather than the concern being about the question, “Are the children learning?”

Legislator C1 compared state control with local control, and he believed that the role of the state has been greatly enhanced, because (before NCLB) there was a great deal of local control. He stated that NCLB has placed the burden on the state to oversee local school districts, making sure districts are fulfilling obligations, and consequently NCLB has given the state more control in public education matters even though “we are a local control state.” He mentioned that local property taxes have picked up less and less a share of the total school bill, and because of the state equalization plan they are taking more from the general fund in order to equalize funding for public education. He stated, “At this point, the state is picking up about 67% of the total school bill, and 20 years ago it was just the opposite, so the state has felt that it can demand more things of schools, and with this shift in major responsibility for funding also comes with it a shift in authority.”

He also maintained that he thinks that public education is going to become much more nationalized, and that legislators in his state are trying to conform to certain national standards, to those created by either a conglomeration of various states or with the national Governors Association recommendations. He concluded, “So, I think that the states are moving toward a voluntary national standard. In fact, we may not be very far from a nationalized controlled curriculum.”

On more of a positive note, Legislator C2 insisted that one thing that NCLB has contributed to public education was to force the states to take action on things that previously they were not taking action on, and to search for potential solutions that were not previously considered. He did not, however, suggest there has been a paradigm shift in power; rather the federal government started examining where it was spending its dollars. Initially, federal monies targeted for public education were “...spent in an inarticulate way, but now it is much more targeted in a strategic way.” He seemed convinced that the dedication of the federal government was to change their strategy to become more researched-based, assisting and offering states the ability to make changes that will deliver better outcomes for students than the previous funding structure of NCLB. He argued that on the horizon “There will be a lot more of what we are seeing with Race to the Top. We will be looking at more competitive grant funding at the federal level to inspire innovations, ambition, and reform at the state level.

The Stimulus Bill and NCLB (Topic #5)

The fifth topic the state legislators addressed was how the Stimulus Bill impacted their state in their efforts with NCLB. There seemed to be a consensus that even though it did not directly impact NCLB legislation, indirectly it drastically assisted the states in the

short term by offering assistance, so that there would not be massive layoffs of teachers throughout their respective states. However, legislators voiced that it was a stop-gap measure, and once the funding was used up things would return to the way they were previously. One way it indirectly assisted the states was to shift the focus of public attention away from NCLB and AYP concerns in the states. The legislators responded to following questions: How did the Stimulus Bill impact your efforts with NCLB? Did it allow you some flexibility with funding NCLB? Did it offer you hope that help was on the way from the federal government?

Legislator K1 stated he did not believe that the Stimulus Bill helped out one way or the other, because the state was making progress with AYP. He argued, “on the greater scheme of things I believe the stimulus package actually is making the recession worse than it if it had not been put in place.” Legislator K2 agreed that the stimulus legislation did not change the efforts of NCLB in their state, but what the Stimulus Bill offered was a shift in the focus from the districts’ efforts to comply with the requirements of NCLB, to the budgetary problems that K-12 schools districts were experiencing. He stated, “I have not read nearly as much about NCLB and AYP in failing schools over the last year as I did prior to that. The public focus has shifted greatly over that period of time.” Even though he did not concede that the Stimulus package offered any hope, he was grateful for the federal money and his state used every penny of it. Unfortunately, he described the Stimulus legislation as a “stopgap measure, though. And I think that is what it was intended to be, because that money runs out at the end of the 2010 school year, and we will experience what we are all referred to as ‘the cliff.’ Once you lose that money there is a big hole in the budget, and there are no resources to replace it or it.”

Even though Legislator M2 suggested that the recovery money did not directly affect NCLB, Legislator M1 offered on a positive note, that if it had not been for the stimulus funds last year, her state would have made very, very, deep cuts on programs throughout the different departments of the state government. She stated that elementary, secondary, and higher education would be in bigger trouble if it had not been for the stimulus funds.” She also applauded the opposing party’s Majority Chairman of the State Education Committee, suggesting that she does not know how her state would have gotten through last year’s budget without the efforts of the Education Committee Chairperson along with the Stimulus funds.

Legislator C1 disagreed that the Stimulus legislation assisted his state very much; because it was his understanding that it would provide grants to local K-12 schools to benefit schools where budget cuts had been made. Unfortunately, much of the stimulus money dealing with education was put into higher education in his state. He contended that once the stimulus money is gone the state is going to be at a precipice in funding education. He stipulated that the Stimulus money did not offer any real hope from the federal government for his state.

Legislator C2, however, insisted that the Stimulus Bill protected his state from otherwise massive cuts. He argued, “It saved us from laying off thousands of teachers and it would have slowed down reforms we already had underway.” He also stated that it did offer hope by offering the states a different way to get through the difficult economic circumstances, and that it offered a new bridge to help the state cross over into recovery.

NCLB and Race to the Top (Topic #6)

The sixth topic the state legislators discussed was the new Race to the Top federal program offered by the U.S. Department of Education. There was a consensus which provided a common thread that the balance of power in public education policy needed to be returned to the states, but only one legislator suggested that Race to the Top would facilitate that idea. Most legislators felt Race to the Top would serve as a way that would continue to centralize public education. The other common thread for this topic was the reason behind all three states applying for Race to the Top, which was that the states needed the money. Legislators responded to the following questions in regard to this topic: Discuss the new policy Race to the Top offered by the U.S. Department of Education; Why did your state opt to apply to this program? Will this program decentralize education policy in the states?

Legislator K1 expressed that part of the reason behind his state applying for Race to the Top was for financial reasons. He expressed, again, that the constitutional role of the federal government was not to control public education within the states, but because of the lure of federal money, states then supported the unconstitutional authority of the national government over public education. He asserted that, unfortunately, Race to the Top would continue to centralize public education policy, leading to the use of common national standards that would eventually lead to a common national assessment every state in the union eventually will utilize. He said, “This only adds to the problems of the federal government’s involvement in the states...a common curriculum and a common assessment for every state in the nation.”

Legislator K2 added that his state did not really have much of a chance to be selected among the states to receive the grant under “Race to the Top,” and he does not think his state will be successful in the second round, because of the state’s limited school charter law. In addition, he does not believe that the federal grants in the Race to the Top program will have much of an impact on the states that receive the money. He concluded, “The money will be spent and everything will return back to the way it was before.”

Legislator M1 stated, “Frankly, I think our state chose to apply (for Race to the Top) because we are strapped for cash right now. Our revenue is running some thirteen percent below projections.” Her state is required to maintain a balanced budget according to the state Constitution, so legislators feel compelled to withhold expenditures, but it is at the point that some school districts are wondering if the district can keep its transportation programs or if the districts can offer summer school because of the deep cuts. She responded, “Will it decentralize education policy? I’m not sure what the answer is. It is my hope that Race to the Top would not repeat NCLB.”

Legislator M2 concurred, “Our state applied for Race to the Top because we wanted a share in the dollars that would be coming to the state for education.” Though the state was not successful in its first round attempt, it planned to apply for the second round. Education policy would not change significantly, because “Our State Board will continue to rely on our State Commissioner of Education to guide us (the state, not the federal government) towards effectively educating our children.”

In regard to Race to the Top, Legislator C1 said, “If the federal government allows the schools in each state to use its own application method, then it could decentralize public education. However, if the refinements are so specific from the

federal government, then it will most likely centralize public education by demanding characteristics that would make all of the states conform to certain kinds of initiatives and methods of operation.” The frustration he shared was in respect to the effort that went into making application, and the states being stroked largely with “the tantalizing of the billions of dollars they said they were going to be awarded to the state, and so we saw these dollar figures.” He argued that none of the states are going to get the initial monetary amount promised to the states, even if a state does win a second round.

Legislator C2 is the lone interviewee who was a supporter of “Race to the Top.” He argued that it is “the most transformational piece of education policy at the federal level in a generation, but he conceded that Race to the Top will only be successful if it gets the balance right by allowing the states to find a way to be innovative. He suggested that the program can be successful as long as it is not another compliance-driven mechanism like NCLB, but rather it must be an innovation-driven mechanism that will provide dollars toward attaining the education goals of the state. He also argued that Race to the Top will actually return the balance of power to the states, because each state would be designing its own plan and implementing that plan, rather than it being a nationalized effort.

Fulfilling NCLB: Economic and Budgetary Considerations of the State (Topic #7)

The seventh topic the state legislators addressed was the way in which current economic conditions impact the ability to adequately fund public education. The common threads that emerged from this topic were the detrimental financial cost to the state with “cuts, cuts, and more cuts,” broken promises from the state in providing financial support to public education, doing more with less, and deciding what to “give up” in order to

fulfill NCLB obligations. Legislators were asked the following questions: In what ways have the current economic conditions impacted your state to adequately fund public education? In light of the current economic conditions what budgetary considerations have you made to adequately fund public schools in your state? Will the current economic conditions impact your state in being able to fulfill NCLB obligations?

Legislator K1 stated that it is even going to be a bigger challenge for his state to adequately fund education, and that people were already being laid off in schools. He did, however, express hope with his number one goal of keeping the money allocated to K-12 public education where he thinks it belongs. He expressed that the state cut K-12 public education by 3.44% this year. His goal was to “Hold state dollars at the same levels of FY10 (Fiscal Year 2010) and to have no tax increase. I believe it can be done; unfortunately, if we increase our losses to \$6 million for FY11 (Fiscal Year 2011) then it cannot be done.”

Legislator K2 argued that his state is not adequately funding public education at this point in time. He stressed, “I have been fighting a battle to avoid further cuts. I feel like a swimmer who is drowning, just trying to avoid drowning. That is really where we are now. Fortunately, the majority of my colleagues in the State Senate support public education and I do not think that they will vote to cut it!” The current economic conditions have impacted the state in fulfilling NCLB because, “As I said before, we are not adequately funding the K-12 system, and because there are inadequate resources, more schools and more school districts are going to fail to make AYP, because they do not have the resources to do it.” He added that the impact of the economy on NCLB “may not be evident for two to three years, because it takes time for the lack of resources to

work its impact through the system, but I think that in two to three years from now you are going to see a decline in student achievement.” The only hope he saw in addressing the economic issues facing his state were if the state immediately started to provide adequate resources to the local school districts, then there would be minimal damage. He said, “We are probably not going to adequately fund public K-12 education in the next fiscal year, in 2011, or in the next year, in 2012. That will mean four years in a row of reduced funding for K-12 education. Great damage will occur in that four-year period of time and it will be reflected in student achievement results.”

Legislator M1 stated that the state revenue was 12% below expectations and the school districts were struggling. She remarked that the state has a very regressive tax structure that is not adequately funding school districts, and the local school districts had to attempt to find alternative means to meet their financial obligations. She stated that the current financial situation will mean that more of the local school districts will have to appeal to the public to spark interest in pursuing a bond initiative to assist school districts. Whether school districts can get an initiative passed to help local schools will be a difficult task because of its regressive tax system. She concluded that this financial dilemma is going to “put great strain on our local school districts and their ability to raise cash locally, because they are already feeling taxed to death.”

Legislator M2 added that K-12 funding is on the table just as other programs are in the state, and that schools will have to do more with less, and schools will have to make smarter decisions about programming. She went on to say that, “We will have to continue to fulfill the requirements of NCLB regardless of funding inadequacies.”

Legislator C1 stressed that, “We are in a world of hurt and we have cut and cut and cut. Beginning last year and now this year we have to cut into what is constitutionally mandated for us to support public education. So, the economic conditions have greatly affected how we can even support the bare minimum of the program that it demands schools to do.” He confided that it was one of the most hurtful and painful things they were doing in the State Capitol at the time. He pointed out that the state has constitutional education obligations and poised the question, “What we are going to give up in order to fulfill the NCLB obligations?” He was concerned about the programs and initiatives they developed in creating grants in the area of graduation rates, and that they might have to get rid of some successful statewide programs in order to fulfill NCLB requirements. He also was concerned with the amount of finger-pointing and accusations that will take place when vying to save one program over another. Hopefully, though, he said, “It seems as though if I am accurately reading the reauthorization act; it is going to be a greater help for turning around schools.”

Legislator C2 suggested that the economic conditions hampered the state’s ability to fund public education. He said it had to cut much deeper in other areas and programs in the state budget to avoid cutting K-12 public education, but in the end it had to cut state funding allocated for public education anyway. However, the state did not cut funds for the assessment or the accountability expectations NCLB provided. Unfortunately, he said that school districts are looking at about a six percent cut, which means there would be schools that would have to close their doors, programs that would be cut, and teachers who would be laid off. But he contended that this was more of a result of the economic environment his state was faced with rather than NCLB.

Concluding Remarks by State Legislators (Topic #8)

State legislators were given the opportunity to offer some final thoughts. The common theme of the legislators concluding remarks suggested that the states are at a crossroads in this country concerning public education and federal-state relations. Legislators interviewed responded to the following request: Please offer any additional comments that you have concerning this topic, including any concluding thoughts, concerns, or insight.

Legislator K1 summed-up his thoughts by stating, “NCLB.... I wish the state was not involved in it. I wish we would get out of it. I don’t like it. I believe there are a lot of reasons not to do it, but we are there, and so we are going to try to do the best we can.” Legislator K2 added, “Well, I think that I have been pretty clear about my opinions of federal government and public education. Do I think there is an appropriate role of the federal government in public education? Yes, I do. And I think that role is to provide grant money to encourage innovation, creativity, and ...a role in research in the educational arena determining best practices.” However, he asserted that the federal government has not played that role. Instead, it has played a more policy-oriented role.

Legislator M2 suggested that public education is at a crossroads in this country. She stated that, for some, the influx of charter schools and virtual schools has offered alternatives to traditional public education and this signals a shift in philosophy in the delivery of education. In contrast, she added, “The public schools must accept any student who shows up at the door regardless of ability, background, or socio-economic level. School district test scores are compromised when special needs children were assessed the same as other students. That is inherently unfair. We do not select certain

students to become educated and leave others behind. Our goal is to make sure each student can function well in the world in which we live.”

Legislator M1 summarized her feelings about the inequalities of NCLB as a reflection of the inequalities that still existed within society. She tended to examine NCLB’s effectiveness from the *Dismantling Racism for Educators Institute* framework. She argued that NCLB embodies a lot of “clueless white privilege” that stereotypically asks, “What is wrong with these urban, black, poor, school districts? ‘Those people’just do not take responsibility for their lives.... (they need to) straighten up their mess and be held accountable for their performance.” She contended that there are many societal factors that contribute to low performing schools, and the teachers and schools should not be the scapegoats for low-performing students. Segregation in society by race and by class somehow has allowed legislators to come up with solutions for educational problems that have nothing to do with real life, and without them having a discussion to address the underlying problems that exist. She suggested that in St. Louis some have said that the only people left in the public school system are either poor black students, or children from over one hundred nations (international students with over 100 spoken languages). She argued that many people who immigrated into the United States as refugees from war-torn countries are survivors of torture, and children who have just had horrendous lives. They are placed in a public school system with African American students who have been disadvantaged by structural inequalities in this country for centuries. She contended that everyone else has taken their children and placed them in private schools or religious schools. She argued that “as long as we stay segregated by race and class we will always get it wrong.”

Legislator C1, on the other hand, ended on more of a hopeful note, “As I read some reports, I am heartened that in the new authorization of the act there will be more help for schools rather than punishment. It was my perception that NCLB was doing a great deal of finger-pointing and accusation and punishment.” His hope was that there would be greater help for schools with failing students. He stated, “I refuse to call a school of failing students a ‘failing school,’ because there is a difference....So putting more resources into schools that are struggling is going to be much better than punishing them and closing schools and turning them over to charters.”

Legislator C2 summarized that legislators have been looking for a long time to find the right balance of what the state and federal role in education policy should be. He expressed a number of options that have been used, yet had not achieved the right balance. He said for example, “We tried having federal mandates and state compliance and people didn't like that. We tried having federal block grants for programs without any indication of the results or outcomes and people didn't like that.” He contended that “We are moving toward a role where the federal government is more like a research and development arm of the state, which makes significant investments into policies that they believe the research supports” and which has the greatest impact on students. The states, in turn, will examine the most effective ways to implement those policies in the context that makes the most sense to their respective school district and state. He expressed his optimism for the future much more so than the other interviewees, “That is why I think we are going to see some quantum leaps over the next five to ten years as states implement these plans with their own flexibility for the means, yet with some real coherence for the ends in mind.” Whether or not the new federal initiative Race to the

Top will allow states to be more “innovative-driven” rather than merely “compliance-mandated,” by shifting the balance of power from the federal government to the states in public education, still remains to be seen.

Summary Remarks

State legislative reactions to *No Child Left Behind* seem to transcend partisan politics. The legislators interviewed in this study suggested that the federal government has taken on an expansive role with NCLB, and it has overstepped its bounds by forcing states to comply with an unfunded mandate. Most of the legislators interviewed argued that this is a constitutional issue and that the national government should not have a voice in public education. They discussed some common factors of resistance from the states related to inefficiencies of the federal government, unrealistic expectations, and the lack of achieving any real school effectiveness.

Legislators also discussed the positive and negative reactions of the public with NCLB. Even though NCLB helped to focus public attention on public school districts and the achievement gap that existed, legislators suggested that the federal government really has done nothing to contribute to school improvement, and that No Child Left Behind was just a political slogan to achieve its intended purpose, which was to gain public attention. Some legislators pointed out that constituents acknowledged the problem goes well beyond the classroom in addressing the problems of low test scores, and that low test scores are more likely a result of funding limitations and insufficient social services. A discussion of these threads, themes, and factors related to NCLB will be addressed further in the concluding chapter.

Chapter Five

Conclusion

Several common themes emerged from the literature reviewed and from the interviews with state legislators. These common themes will be described and discussed in further detail in this final chapter:

- There was a consensus among the legislators interviewed that NCLB was unconstitutional. They agreed that the power of the state was usurped by the federal government in public education forcing states to comply with NCLB. Not only was the federal government micro-managing the state, but it was micro-managing the local school districts as well.
- The allocation of NCLB funding was used as monetary enticement, resulting with state requests of just “show me the money.”
- Legislators agreed that NCLB was an unfunded mandate, because the federal government did not provide sufficient resources to support this federally mandated program.
- Stress was accelerated by the federal government requiring states to maintain highly qualified teachers, while at the same time the federal government broke its promises to provide adequate funding to support programs and teachers.
- NCLB made it very difficult to attract and retain highly qualified teachers. It is virtually impossible to employ a highly qualified teacher in every subject area, especially in remote areas of the state.
- Legislators voiced their concern about the unrealistic expectation of every school reaching NCLB proficiency goals by 2014.

- NCLB was more concerned about raising test scores and judging schools based on attaining proficiency standards, rather than being concerned about real student learning and school effectiveness.
- The accountability system each state had in place was already raising the educational attainment of low-performing students. Consequently, there was an additional demand by the federal government for more testing than what was needed.
- The AYP requirement for schools to meet yearly performance goals on standardized tests for all of its demographic subgroups, including special education, and especially the ELL subgroup (made up of a vast majority of Hispanics) is impossible to achieve.
- NCLB resistance transcended partisan politics. All the legislators interviewed expressed opposition to the expansion of the federal government's role in public education through NCLB legislation.

The state legislators interviewed in this study voiced their displeasure with NCLB in regard to AYP requirements related to student achievement, attaining proficiency standards by 2014, especially with “subgroup populations” (i.e., Hispanic, ELL and special education students), and maintaining highly qualified teachers. Even though these were deep concerns of the legislators, their primary focus of resistance stemmed from the philosophy differences in regard to which level of government should hold the power in making policy decisions in public education.

A continual interwoven thread found throughout this study was the overwhelming view that the national government overstepped the bounds of the federal government by

forcing the states to comply with NCLB. Legislators argued that the Constitution provides that public education policy is a power reserved for the states, and that the increased role of the federal government has not yielded productive or desired results. Legislators voiced their displeasure of the national government as it has increased its participation in policy decisions in public education creating greater demands on public education.

Most legislators interviewed supported the idea that the control of public education should be in the hands of the local school districts, not in the hands of the state or the national government. The dilemma the local school districts are faced with is the tendency not only for the states to micro-manage local school districts, but now for the national government to micro-manage school districts as well. Even though states are willing to take recommendations from the federal government, the states should have the power to implement policy without the constant changes made by the national government.

Many state legislators felt like their state was heading in the right direction with its school improvement process prior to the national government's intrusion in public education through NCLB. Some legislators suggested that this power struggle between the levels of government is a growing tug of war over public education. Legislators agreed that NCLB has diminished the role of the states and local control in public education, and that the control of public education should be returned to the states and local school districts. They believed NCLB has shifted public education policy from local control to state and national control, and they are concerned that public education will

become much more nationalized. There was an agreement among legislators that the balance of power in public education needed to be returned to the states.

This common thread suggested that public education is at a crossroads in this country. As one legislator voiced the consensus of his peers, “There is an appropriate role of the federal government in public education, and that is to provide funds, to encourage innovation and creativity, and to fill a role in research in the educational arena by helping to determine best practices, but not to take control of all policy decisions in public education.”

One legislator went as far as to say that the power of the state has been usurped by the federal government in public education, and that this power struggle between the federal government and the state could lead to a very fractious moment. The consensus of the legislators interviewed was that the balance of power in public education policy needed to be returned to the states. Some common themes tied to this discussion included the use of NCLB funding as monetary enticement, resulting with state requests of just “show me the money” because the state sees NCLB as an unfunded mandate. With the 2009-2010 economic conditions states have faced, NCLB has caused additional stress on the already impoverished conditions of the states, translating into additional budget cuts in public education.

It is difficult to predict whether resistance to NCLB could set precedence for emerging conflicts between state non-compliance and federal policy. Shelly’s findings indicated that, “Formal state challenges will remain extremely rare, but regulations that undermine state autonomy and pose significant challenges for states to meet may drive

more affluent states to challenge them, particularly when the federal government threatens to withhold funding or is inflexible in their demands” (Shelly, 2008, p.445).

As stated in the introduction, the exception to the non-confrontational relationship between state responses to federal mandates has been the state resistance to No Child Left Behind. Some of the literature suggested that NCLB has provided an example of what some legislators have described as “coercive federalism.” Some legislators concurred with this sentiment, like Idaho Senator Gary Schroeder, suggesting it was “the largest unfunded mandate in the history of the United States” (National Education Association, 2006). With NCLB, state legislatures have not remained idly passive, including thirty-eight states that flirted with the idea of challenging NCLB with state resolutions and legislation which was critical of NCLB. The states of Colorado, Illinois, Maine, Utah, and Virginia passed legislation critical of NCLB with Connecticut leading the way with a lawsuit suing the Department of Education.

Federal Funding: An Ongoing Dependency

An ongoing dependency that legislators have to consider in challenging NCLB through formal state legislative actions is the reliance upon federal funding for their state programs. With economic conditions states are facing, state compliance for any federal funding is a powerful mechanism. States that do not comply with NCLB are affected not only by additional financial shortages, but they are also faced with a potential political nightmare from an outcry of public response, due to the lack of money for school program funding.

Legislators described NCLB as an unfunded mandate, a result of the federal government not providing the sufficient resources to support the federally mandated

program. They agreed that the federal government never followed through with the amount of money promised, so then the states had difficulty meeting obligatory standards due to the lack of resources from the federal government to meet those demands. The economic conditions have brought additional stress on states with detrimental financial costs. This stress was accelerated by the federal government requiring states to maintain highly qualified teachers while at the same time the federal government had broken promises to states about providing adequate funding to support programs and teachers in public education. An obvious concern for the states and local school districts were the “cuts, cuts, and more cuts” being made by each state. States and school districts were being asked to do more with less, being forced to make difficult decisions about what needed to be given up in order to fulfill NCLB obligations. State legislators agreed that it is their responsibility to ensure that the state adequately funds public education, and yet the legislators were drastically falling short of this constitutional requirement of the state.

Whether it is NCLB, the Stimulus Package, or the Race to the Top initiative, state legislatures seem to be more than willing to accept and spend federal funding offered to their states. It appeared that the enticement or lure of federal funds targeted for public education was difficult to forego, especially when state legislators were strapped for cash, they seem compelled to apply for federal funding. Some state legislators discussed the possibility of challenging NCLB by refusing to participate, but once they realized the financial costs to the state, the idea of refusing to participate in NCLB came to an end. This cycle is perpetuated because states have become so dependent on federal funding. Davies and Derthick suggested the states allowed “the federal government to impose extensive conditions with which states feel they have no choice but to comply, regardless

of how much the condition narrows the range of available policy options” (Shelly, 2008, p. 447). Perhaps this is why states, including Kansas, Missouri, and Colorado, have complied with NCLB. The federal government has continued to add conditions to the original passage of ESEA with states’ dependence on this form of federal funding since 1965. Shelly stated that, “The threat of potential funding loss makes the rebellion against NLCB even more remarkable” (Shelly, 2008, p.447).

The Risk of Losing Federal Funding

In the literature examined there are a number of reasons given to explain why less affluent states are hesitant to challenge NCLB. Challenges made by less affluent states coincide with the costs incurred which could financially cripple the state if it legally challenged NCLB (Allard, 2004; Fellowes & Rowe; Krutz, 2005), and less affluent states are more likely to be financially reliant on the monies tied to NCLB (Shelly, 2008, p.453). The main federal method of financially supporting less affluent schools is the Title I program, which distributed over \$14.6 billion to state and local agencies in 2005 (Shelly, 2008). In many poverty-stricken areas, Title I and other funds can make up a huge share of total educational revenue, while affluent areas rely far more on local and state funding. Poorer states seem less willing to risk losing federal funds and are less likely to challenge NCLB. With that said, it is not feasible for some of the less affluent states to challenge NCLB because of the additional costs it places on those states (Shelly, 2008). In this time of economic uncertainty Kansas, Missouri, and Colorado have all voiced a need for some relief from their financial woes, but each does not want any additional ties to federal mandates. Whether or not this would cause additional hardship

on the states, to the end that legislators would consider a more vociferous reaction to NCLB is not certain but seems unlikely.

NCLB and its Significance

Comprehensive studies have found that states have complied with the letter of the law for most federal legislative education provisions, but that NCLB sparked widespread change from state DOEs down to the classroom (National Education Association 2007; Center on Education Policy 2007a; Education Commission of the States 2006). Shelly's study did not consider the conventional ways that states object to federal legislation through lobbying and negotiations that scholars have reported throughout the years (Dinan 1997; Haider 1974). However, though the states, including Kansas, Missouri, and Colorado, have used some of the following techniques in an attempt to change NCLB, including petitioning the Department of Education for increased flexibility in implementation, requesting an increase in flexibility for waivers to NCLB provisions (Erpenbach & Forte 2005; Gormley 2006; Sunderman 2006), and through lobbying efforts (Shelly, 2008, p. 446). It is important to recognize these conventional methods of resistance to NCLB to examine whether or not these methods have been successful enough to orchestrate change to this federal legislation. What Shelly's study offered went beyond these conventional ways and examined the resistance made by the states through proposed resolutions, bills, and laws (Shelly, 2008).

Shelly's study measured the impact of a number of factors for states resisting NCLB. He observed that there were nineteen states that introduced a resolution into its legislature opposing NCLB, yet those states did not follow through with any additional action. An additional nine states passed a resolution through, at least, one house of its

state legislature, and there were three states that passed a resolution through both houses of its state legislatures, challenging NCLB. Some states went a step beyond merely passing resolutions by considering passing a bill into law. As mentioned previously, the states of Utah and Maine made efforts to pass a law against NCLB, and the states of Nevada and New Jersey passed such a bill against NCLB through at least one house of its state legislature. The states of Colorado, Illinois, Maine, Utah, and Virginia went even further by challenging NCLB in the most profound way, by passing laws in formal opposition to NCLB (Shelly, 2008).

Other Theories of Resistance to NCLB

Federalism scholars have offered theories for reasons of state reactions to NCLB. Krane (2007) suggested that states may be more likely to resist federal legislation when “key constituencies at the state level oppose it, when it eliminates state government discretion above and beyond what a typical federal regulation does, and when it requires states to bear its costs” (Shelly, 2008, p. 448). Gormley (2006) added that intergovernmental conflict suggested that “large numbers of mandates and little federal funds are most likely to provoke opposition” (Shelley, 2008, p.448).

The increase in federal government requirements of NCLB brought with it a serious financial challenge to the states, including the three states examined in this study, especially when states had to divert state resources to honor federal mandates. Certainly, any state that had a preexisting capacity that is less extensive and less adaptable is more likely to oppose any new requirements (Grogan, 1999). Preexisting conditions such as state having difficulty hiring and retaining highly qualified teachers were discussed by state legislators including those from Kansas, Missouri, and Colorado.

It has been difficult for states to meet this requirement for a variety of reasons. Some legislators interviewed suggested that some excellent teachers have left the teaching profession because of NCLB demands which forced educators to focus on test scores, and forced them to teach from a script in a regimented fashion. This caused some very qualified teachers to get burned out and they left the teaching profession. Legislators suggested that it makes it very difficult to attract and retain highly qualified teachers in this kind of system.

Other legislators suggested it is virtually impossible to find and employ a highly qualified teacher in every subject area, especially in remote areas of the state. These conditions may also influence a state's non-compliance to NCLB demands. This burden was voiced from legislators of all three states in this study, especially Colorado, because the state had fewer and fewer teachers who met the HQT requirements, and therefore was more susceptible to challenge NCLB.

The unrealistic expectation of every school reaching NCLB proficiency goals by 2014 is another factor of resistance by the states. The legislators interviewed in this study suggested that NCLB was more concerned about raising test scores and in judging schools based on attaining proficiency standards, rather than being concerned about real student learning and school effectiveness. Student accountability was a significant demand placed upon the states by NCLB. Each state was to create their own accountability system and any state that did not have a system already in place found it that much more difficult to meet the necessary requirements as quickly as NCLB demanded. Consequently, that issue made some of those states more willing to challenge NCLB (Goertz, 2005; Kim, 2003). However, some state legislators, including the

legislators interviewed in this study from Kansas, Missouri, and Colorado, stated that NCLB forced them to modify their existing valid and reliable accountability systems that were in place. They believed that the accountability system each state had in place was already raising the educational attainment of low-performing students. Consequently, the states were faced with the additional demand by the federal government for more testing than what was required or needed.

Partisan Politics

Another area of interest to consider in states resisting NCLB was to determine the partisan politics at play at the state level. Some studies have indicated a strong role of partisan politics in the state policy process (Barrilleaux 1997; Burstein 2003). There was reason to suggest that partisan politics would also be a strong predictor of resistance to NCLB. Even though, initially, NCLB had strong bipartisan support, it was always considered to be President Bush's signature domestic program. One could naturally assume then that Republicans were more likely than Democrats to support NCLB, but evidence seemed to point to the contrary. Shelly's research indicated that four of the six states that had passed laws placing them in opposition to NCLB (Utah, New Mexico, Virginia, and Colorado) supported President Bush in the 2004 election, and Mintrom and Vergari (1998) argued "Republicans at the state level will oppose expansion of public education policy due to their traditional affinity for limited government" (Shelly, 2008, p. 451), concluding that support from either of the major political parties is subject to debate. The legislators interviewed for this study also transcended those partisan implications. All legislators interviewed, whether Democrat or Republican, expressed

their opposition to the expansion of the federal government's role in public education through NCLB legislation.

Challenging Populations and Demographics

Another variable to consider that contributed to NCLB resistance by the states was the demographic makeup of each of the states. Studies have indicated that demographic variables have been a reliable indicator of NCLB resistance from the states. Scholars have shown that the size and diversity of a state's race and ethnic population has had a significant effect on a host of education and social policies (Fellowes and Rowe 2004; Hero & Tolbert 1996; Radcliff & Saiz 1995). In Connecticut, the NAACP supported the federal government rather than the state in its lawsuit against NCLB. The NAACP suggested that the state is rooted in fear, and that testing shows the state has failed to educate African American children. In Utah, the Raza Political Action Committee (Raza PAC), "...did not support Utah's wanting to disregard the law's accountability system in favor of Utah's own system, which is one of the weakest in the country" (Davis and Archer, 2005). Also, because the general population of Blacks and Hispanics has supported NCLB more than Whites, further pressure is brought to bear on a state governments' willingness to challenge NCLB (Phi Delta Kappan and the Gallup Organization, 2006).

It also has been more difficult to raise the educational achievement of some minority ethnic populations, and when that existed it was more likely for those states to challenge provisions of NCLB (Shelly, 2008). With AYP requiring schools to meet yearly performance goals on standardized tests for all of its demographic subgroups, states like Colorado had more difficulty reaching AYP with these subgroups, especially

the ELL subgroup that is made up of a vast majority of Hispanics. NCLB demands that every student, including ELL students, meet the school's AYP goal within one year of residency. Critics argued the futility of demanding students to complete an exam that they cannot possibly pass, penalize schools by demanding a standard of achievement they cannot possibly attain. Some early studies by Franks (2004), and Novak and Fuller (2003) indicated that “50–75 percent of schools with large ELL populations could be labeled as ‘needs improvement’” (Shelly, 2008, p. 452). Kansas, Missouri, and Colorado legislators interviewed in this study also voiced their concerns of the special education sub-group populations being tested. With only five percent of special education’s total population exempt from testing, special education advocates argued that their students may never be able to achieve proficiency on assessments designed for regular education students, which especially impacts schools with larger special education populations with the real possibility for those schools to fail.

Hispanic Population and ELL

An increase in a states Hispanic population has led some states to higher levels of formal changes to NCLB, suggesting that those states are struggling in the effort to see success with ELL students. At times, the Hispanic student population has been identified as slow achievers, which consequently has motivated parents and support groups to agree with NCLB legislation as a way to bring assistance to this disadvantaged population. However, some rebellious states have resisted NCLB legislation despite the Hispanic population supporting NCLB. Because Hispanic students are disproportionately poor and more likely to struggle with the English language, they are “among the most difficult subgroups to bring into compliance with NCLB’s AYP demands” (Shelly, 2008, p.458).

Officials of these resistant states, including legislators interviewed from all three states in this study, and especially Colorado, opposed the idea that they are in resistance to NCLB due to rigorous standards which would reveal a deficiency in the state's education of this subgroup of students. Instead, they have resisted NCLB because the demand for progress with ELL students is literally impossible to achieve. They argued that it is completely unrealistic for a student who is just learning the English Language to compete at the same level as the native speaker, within one year of that student entering a public school. Many of the states offering resistance, including Connecticut and Virginia, have sought greater flexibility for ELL testing in their challenges to NCLB, supporting the importance of the size of a state's Hispanic population in determining that resistance (Shelly, 2008).

This Hispanic variable illustrates the problem states were faced with using NCLB's accountability system. Though troubling as it was for these states, including Colorado, they have not resisted testing students, because almost all of the states had already developed an accountability system. The problem for Colorado and for the other designated states, was the demand for these states to meet AYP standards for all subgroups, which for some subgroups was either impossible or it would require extensive resources that were unavailable. Concerning the African-American population, a state's level of challenge was not significant in relation to the size of this population within a given state. Consequently, there was less of a challenge for the African-American population than for the Hispanic population to make AYP, perhaps suggesting why Missouri did not resist NCLB to the same degree Colorado resisted.

What has been learned from the conflicts between the states and the federal government could assist in the reshaping of the reauthorization of NCLB. The states have continued to request for the federal government to alter NCLB requirements for AYP. State legislators have asked for change in the policy demands of NCLB that require the same standards for a states' subgroup populations, and they have requested greater flexibility in testing, specifically for ELL and special education populations (Wallis & Steptoe, 2007; Wong & Sunderman, 2007).

Predicting Future Resistance by the States

In light of challenges made to NCLB and the potential for states to challenge future federal legislation, a number of factors for resistance by the three states of Kansas, Missouri, and Colorado, are analogous with Shelly's study, offering some insight into the significance of a state's predisposition to challenge NCLB or to challenge future federal legislation regarding public education.

Shelly measured ten independent variables to determine if there was any significance in a state's predisposition with states challenging NCLB. Those factors he measured included each state's Hispanic population, African-American population, special education population, and its impoverished population. He also measured the percentage of school funding allocations coming from the federal government; the percentage of the 2004 vote Bush received; the strength of the teacher unions in each state; the strain NLCB placed on existing state educational programs and observations for the accountability; school choice; and highly qualified variables to determine if any of these variables influenced a state in challenging NCLB (Shelly, 2008).

Interestingly enough, Shelly's study specifies that several variables did not yield any statistical significance in determining if a state would challenge NCLB, including the following factors, the African American population (a concern for Missouri), the strength of the teacher's union, accountability measures (a concern of all three states), federal funding allocations (a concern for all three states), and school choice. The Hispanic population (a major concern for Colorado), poverty (a concern for all three states, but especially Colorado and Missouri) special education (a concern for all three states), Bush vote, and HQT variables (a concern for all three states, especially voiced by Missouri and Colorado) all achieved statistical significance; however, special education, the percentage of Bush vote, and percentage of HQT failed to achieve any acceptable level of significance in determining if a state would challenge NCLB (Shelly, 2008).

With that noted, both the Hispanic variable (a major concern for Colorado) and the poverty variable (a concern for all three states, especially Colorado and Missouri) were the only two variables that indicated statistical significance, suggesting that their effects are real in determining if a state had or would consider challenging NCLB or other federal mandated legislation in the future. Five out of the six states (including Colorado, Connecticut, Illinois, Utah, and Virginia) that formally passed laws against NCLB, have a greater population of Hispanics than the national mean, and they also have poverty rates below the national mean. With Colorado already challenging NCLB, Missouri may be not far behind, according to the Missouri state legislators interviewed in this study, because of the poverty variable within their state. Shelly's study also points out that a shift of the Hispanic population within a state would result in that state being more likely to challenge NCLB through the passage of future legislation (Shelly, 2008).

Future Implication

One of the factors predicting future state challenges to federal legislation is the scope of the problem it creates for the states, influencing its likelihood of pursuing a formal challenge in the future. The unrealistic demands that are placed on states that have had a large increase in the Hispanic population could cause those states to resist future federal legislation. In all likelihood, those states cannot meet those expectations, paralleling the comments made by legislators from the State of Colorado. Federal funding, or the lack thereof, also impacts how states regard the scope of the problem that any federal regulation creates. Krane (2007) and Gormley (2006) suggested that, “when the federal government provides relatively little funding for these types of expansive, costly programs, it can create significant financial hardship for a state and increase the likelihood that they resist” (Shelly, 2008, p. 461). This lack of funding provided by the federal government to the states was a crucial part of the criticism of NCLB by the states in this study.

Another factor influencing state resistance, including the resistance by Colorado to federal regulation, has been more drastic when that regulation intrudes on areas where states have traditionally enjoyed great autonomy (Gormley, 2006; Krane, 2007). NCLB regulations have called for a significant increase in the involvement of the federal government overseeing state responsibilities. States confronted with federal control (that did not exist previously) over certain matters will more likely impact a state’s decision to formally oppose future federal legislation. State legislators may resent this intrusion by the federal government, especially in those areas that historically have been the primary focus of responsibility of the states. In addition, any future expansion of control by the

federal government, demanding unrealistic increases in requirements the states cannot possibly attain, mandating an unrealistic timeframe, has certainly been frowned upon by the states.

The notion of state's feeling threatened by the federal government if those states failed to make AYP was a real concern all three states in this study faced. For example, a state can feel threatened if they do not comply with NCLB. Also, legislators in a state can also feel threatened by the federal government when they find themselves in an impossible situation where they cannot be successful. In either case, the states might be found in a position where the real possibility exists of losing federal funding. The threat of losing that funding provoked some states to formally challenge the federal government. Shelly's study indicated there was a lack of significance demonstrating that federal funding had impacted states' reactions to NCLB. He suggested that states had become dependent on federal funding, perhaps more than they were willing to admit, even when those federal contributions to the states were not that substantial. Derthick suggested that states in the past have worked together to protect their financial prerogatives from the federal government with some success, allowing them to overcome the disunity that federalism scholars predict can doom their effort to influence regulation (Derthick, 2001). This, however, could be a challenging task for the states to unite together because of the associated problems due to the economic conditions the individual states will be facing in the future.

Another instrumental factor in determining a state's reaction to NCLB or any future federal legislation for public education is the flexibility the federal government uses in addressing initial concerns of the states. When the federal government lacks

flexibility, state legislators may feel their only recourse is to formally challenge the federal government. If compromises are made by the federal government, the states seem to have been more willing to make compromises and use viable alternatives rather than formal challenges, thereby maintaining favorable intergovernmental relations. Forty-six states applied to the Department of Education for waivers from certain NCLB provisions. With the Department of Education granting these waivers to the states, the states have had additional flexibility with NCLB implementation and which has contributed to more scaling back of formal challenges by the states. Even though some states demonstrated formal resistance to NCLB, it was apparent that most states have carefully played somewhat of a subservient role in the federal system under No Child Left Behind.

Summary Remarks

Prior to NCLB, the state governments had the greatest level of control over public education. Then, with the passage of NCLB, the federal government's power escalated, demanding a stronger role in defining quality education for public schools, which has placed an unprecedented amount of stress not only on the three states in this study, but on all fifty states. Some might argue that the states' legislative resistance to NCLB really only represents a symbolic measure that those politicians have designed to pacify any public complaints by their constituents, or to veil a political maneuver used to request changes in implementing some aspect of NCLB. Nevertheless, states have learned that challenges by the state to NCLB have provided some leverage in waiver negotiations with the Department of Education, giving the states some incentive in strategizing challenges to the federal government in the future. A concern of the state legislators that still needs to be resolved is the requirement of each state to reach the No Child Left

Behind's "unrealistic" proficiency goals by 2014, which will influence intergovernmental relations. This power struggle in public education between the national government and the states has been a continual theme of resistance by the states that will impact No Child Left Behind legislation and potentially shape any federal education legislation in the future. The increased role of federal government in public education continues to be a revealing inquiry in cooperative federalism. These states' reactions to No Child Left Behind could provide a model of study when considering decisions made by states to any future intergovernmental conflicts in public education, and may supply background for insightful and meaningful actions by the federal and state government that will support all student learners.

Appendix A

The following chart indicates the number of Kansas elementary and secondary schools with their respective total number of students and teachers and teacher ratio.

Elementary Education and Secondary Education Characteristics

Total Number of Schools	1,428	1,950
Total Students	469,506	966,645
Total Teachers	35,295	62,360
Pupil/Teacher Ratio	13.3	15.5

The total amount of revenue and expenditures of a state allocated for public education are helpful in recognizing some of the complexities that each state has to address in their respective legislature. The following chart offers a glimpse at federal, state, and local revenues and expenditures in Kansas for elementary and secondary education, with a comparison to the U.S. average of revenues and expenditures. As one can see those revenues and expenditures are about half of the national average.

Elementary Education and Secondary Education Finance

	Kansas	U.S. (average)
Total Revenues	\$5,259,227,972	\$10,888,972,224
Total Expenditures	\$4,868,047,958	\$11,024,562,289
Total Current Expenditures	\$4,339,477,193	\$9,349,526,776
Local Revenue Subtotal	\$ 1,724,787,473	\$4,757,689,860
Local Revenue Intermediate Agencies	\$108,896,691	\$27,982,071
State Revenues	\$2,980,533,515	\$5,180,919,520
Federal Revenue	\$445,010,293	\$922,380,771
Total Revenues	\$5,259,227,972	\$10,888,972,224
Instructional Expenditures	\$2,632,372,590	\$5,700,203,962
Support Services Expenditures	\$1,512,389,978	\$3,272,177,207
Non-Instruction Expenditures	\$194,714,625	\$377,145,606
Total Current Expenditures – Public El/Sec	\$4,339,477,193	\$9,349,526,776
Total Current Expenditures for Education	\$4,868,047,958	

Appendix B

Kansas' Record of Achievement in Reading for 2006-2007

	Kansas 4th Graders		
	State Data— % Proficient	NAEP Data— % Basic	NAEP Data— % Proficient
All	85%	72%	36%
White	90%	77%	41%
Black	68%	52%	18%
Hispanic	70%	54%	19%
Low Income	76%	57%	21%

	Kansas 8th Graders		
	State Data— % Proficient	NAEP Data— % Basic	NAEP Data— % Proficient
All	81%	81%	35%
White	86%	86%	40%
Black	62%	59%	12%
Hispanic	61%	59%	17%
Low Income	68%	66%	20%

Appendix C

Kansas' Record of Achievement in Math for 2006-2007

	Kansas 4th Graders		
	State Data— % Proficient	NAEP Data— % Basic	NAEP Data— % Proficient
All	86%	89%	51%
White	90%	93%	58%
Black	70%	71%	21%
Hispanic	76%	78%	29%
Low Income	79%	81%	34%

	Kansas 8th Graders		
	State Data— % Proficient	NAEP Data— % Basic	NAEP Data— % Proficient
All	72%	81%	40%
White	78%	87%	46%
Black	51%	57%	16%
Hispanic	54%	58%	16%
Low Income	58%	67%	23%

Kansas Testing Data and 2007 National Assessment of Educational Progress (NAEP) Data

Appendix D

Missouri's Record of Achievement in Reading for 2006-2007

	Missouri 4th Graders		
	State Data— % Proficient	NAEP Data— % Basic	NAEP Data— % Proficient
All	17%	67%	32%
White	20%	74%	37%
Black	8%	41%	12%
Hispanic	10%	59%	22%
Low Income	9%	53%	18%

	Missouri 8th Graders		
	State Data— % Proficient	NAEP Data— % Basic	NAEP Data— % Proficient
All	15%	75%	31%
White	18%	82%	37%
Black	4%	51%	10%
Hispanic	7%	58%	12%
Low Income	7%	63%	18%

Appendix E

Missouri's Record of Achievement in Math for 2006-2007

	Missouri 4th Graders		
	State Data— % Proficient	NAEP Data— % Basic	NAEP Data— % Proficient
All	10%	82%	38%
White	11%	88%	45%
Black	3%	57%	12%
Hispanic	5%	78%	26%
Low Income	5%	71%	22%

	Missouri 8th Graders		
	State Data— % Proficient	NAEP Data— % Basic	NAEP Data— % Proficient
All	14%	72%	30%
White	17%	81%	36%
Black	3%	38%	6%
Hispanic	7%	62%	17%
Low Income	6%	55%	16%

Source: Missouri Testing Data and 2007 National Assessment of Educational Progress

Appendix F

The following indicates the AYP for the State of Missouri in 2008, from the Missouri Department of Elementary and Secondary Education, Summary Report. Even though Missouri is meeting its targeted graduation and attendance targets they have struggled with meeting the projected communication Arts and Mathematics targets.

Missouri Department of Elementary and Secondary Education State of Missouri PRELIMINARY Adequate Yearly Progress**	2008	Groups*	Met
	Communication Arts	10	5
	Mathematics	10	5

<i>Overall Status</i>	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Communication Arts Status		Not Met	Not Met	Not Met	Not Met	Not Met	Not Met						
Mathematics Status		Not Met	Not Met	Not Met	Not Met	Not Met	Not Met						
Attendance Rate				Met	Met	Met	Met						
Graduation Rate				Met	Met	Met	Met						
<i>COMMUNICATION ARTS</i>	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Annual Proficiency Target	18.4	19.4	20.4	26.6	34.7	42.9	51.0	59.2	67.4	75.5	83.7	91.8	100.0

Appendix G

Colorado's Record of Achievement in Reading for 2006-2007

	Colorado 4th Graders		
	State Data— % Proficient	NAEP Data— % Basic	NAEP Data— % Proficient
All	86%	70%	36%
White	93%	81%	47%
Black	76%	56%	18%
Hispanic	73%	48%	15%
Low Income	75%	51%	17%

	Colorado 8th Graders		
	State Data— % Proficient	NAEP Data— % Basic	NAEP Data— % Proficient
All	87%	79%	35%
White	93%	87%	43%
Black	77%	65%	18%
Hispanic	74%	62%	17%
Low Income	75%	64%	18%

Appendix H

Colorado's Record of Achievement in Math for 2006-2007

	Colorado 4th Graders		
	State Data— % Proficient	NAEP Data— % Basic	NAEP Data— % Proficient
All	91%	82%	41%
White	95%	91%	54%
Black	81%	65%	20%
Hispanic	83%	66%	19%
Low Income	84%	67%	21%

	Colorado 8th Graders		
	State Data— % Proficient	NAEP Data— % Basic	NAEP Data— % Proficient
All	76%	75%	37%
White	85%	85%	48%
Black	56%	60%	21%
Hispanic	59%	53%	13%
Low Income	59%	58%	17%

Colorado Testing Data and 2007 National Assessment of Educational Progress Data

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